Office of the Clerk
United States Court of Appeals for the Ninth Circuit
95 Seventh Street
Post Office Box 193939
San Francisco, California 94119-3939

December 14, 2009

To: Don Benny Anderson

From: Molly C. Dwyer, Clerk of Court
U.S. Court of Appeals for the Ninth Circuit
By: Rhonda Roberts, Deputy Clerk

Re: USCA No. 09-16311 *Don Anderson v. FBI*

We have received your recent transmittal to this office. However, per court's order filed on 10/16/09 "No further filings shall be accepted in this closed case. Therefore I'm returning your motion along with a copy of the order filed on 10/16/09.

FILED
Oct 16 2009
Molly C. Dwyer, Clerk U.S. Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON BENNY ANDERSON, Petitioner – Appellant, v. FEDERAL BUREAU OF INVESTIGATION, Respondent – Appellee	No. 09-16311 D.C. No. 2:08-cv-1256-JCM-LRL District of Nevada Las Vegas ORDER

Before: CANBY, THOMAS and IKUTA, Circuit Judges.

The motion for reconsideration is denied. *See* 9th Cir. R. 27-10.

The emergency motion is denied.

No further filings shall be accepted in this closed case.

MF/Pro Se

CLERK PLEASE STAMP FILED; PUT IN RETURN ENVELOPE.

MANDATE of Oct. 21, 2009, Court issued MANDATE pursuant to Rule 41(a). **APPELLANT'S MOTION FOR STAY OF THE MANDATE PENDING, PETITION FOR REHEARING** ***EN BANC, Rule 35. En Banc Determination, pursuant to Rule 41(a), KEEPS THE CASE OPEN OR REOPENS CASE FOR REVIEW VIA THIS PETITION – The doctrine of "opening the door".***
Circuit Advisory Committee Note to Rules 35-1 to 35-3.
(2) Petition for Rehearing for En Banc. When the clerk receives a timely petition for rehearing en banc, copies are sent to all active judges....any judge may, within 21 days of receipt make... recommendation as to en banc consideration. Upon receipt....any judge has 14 days to call for enbanc consideration. When court votes to rehear a matter en banc...will enter an order so indicating. Panel decision is contrary to decision(s) of the Supreme Court of United States and precedent(s) of this court – see page(s) iii – v. This a *Schlup v. Delo* gateway case.

9th Circuit Case No. 09-16311
IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DON BENNY ANDERSON,
Petitioner-Appellant,

v.

UNITED STATES PAROLE
COMMISSION et al.,
Respondent-Appellee,

APPELLANT'S MOTION FOR STAY OF THE MANDATE PENDING,

Rule 35. En Banc Determination, pursuant to 41(a)

PETITION FOR REHEARING *EN BANC* PURSUANT TO RULE 41(a).

ON APPEAL FROM THE UNITED STATES DISTRICT COURT DISTRICT OF NEVADA, LAS VEGAS 2:08-cv-01256-JCM-LRL.

Telephone Numbers and Office Addresses of Attorneys:

Counsel for Appellant:	Don Benny Anderson Tel: (217) 246-4999 2500 Moultrie Avenue P.O. Box 1156 Mattoon, IL 61938-1156
Counsel for Appellee:	Robert L. Ellman Appellate Chief and Assistant U.S. Attorney Tel: (702) 388-6546 333 Las Vegas Blvd. South, Suite 5000 Las Vegas, Nevada 89101

December 9, 2009

Based on my professional judgment, I believe the panel decision is contrary to the following decision(s) of the Supreme Court of the United States or the precedent(s) of this court:

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Based on my professional judgment, I believe this appeal requires an answer to one or more precedent-setting questions of exceptional importance:

(1) Whether seeking a stay pending the disposition of this appeal and the Ninth Circuit's ability to consider the matter quickly to prevent further irreparable harm on Don Benny Anderson are warranted. "Loss of First Amendment Freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 6 S. Ct. 2673; 47 L.Ed. (1976) and WE THE PEOPLE, "It is deeply distressing that the Department of Justice, whose mission is to protect the constitutional liberties of the people of the United States, should even appear to be seeking to subvert them by extreme and dubious legal argument." *United States v. Chodwick*, 433 U.S. 1 an 16 (1976). "There can be no sanction or penalty imposed upon one, because of his exercise of constitutional rights." *Miller v. U.S.*, 230 F.2d, 486, 490. "It will be an evil day for American Liberty if the theory of a government outside supreme law finds lodgment in our constitutional jurisprudence. No higher

duty rests upon this Court than to exert its full authority to prevent all violations of the principles of the Constitution." *Gomillion v. Lightfoot, 364 U.S. 155 (1966).* 'An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." *Perez v. Brownell, 356 U.S. 44, 7: 8 S. Ct. 568, 2 L. Ed. 2d 603 (1958).* "Where rights secured by the Constitution are involved, there can be no 'rule making' or legislation which would abrogate them." *Norton v. Shelby County, 118 U.S. 425 p. 442.* "The claim and exercise of a Constitution right cannot be converted into a crime"..."a denial of them would be a denial of due process of law". *Warnock v. Pecos County, Texas, 88 F3d 341 (5th Cir. 1996).* "No man [or woman] in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law, and are bound to obey it." *Cannon v. Commission on Judicial Qualifications, (1975) 14 Cal. 3d 678, 694.*

Article I. (2) Whether judges have violated the following Summary of Constitutional Rights,
Article II. Powers and Duties.

(3) Whether judges disposition on the merits of case was wrong in light of Informal Package for Pro Se Appellants (April 2009) page 4. "I. THE COURT OF APPEALS...reviews final decisions of the United States District Court...court looks at the district court or administrative record in the case and the briefs of the parties to see if there are any constitutional, legal, or factual mistakes. "...in a 'motion to dismiss, the material allegations of the complaint are taken as admitted'. From this vantage point, courts are reluctant to dismiss complaints unless it appears the plaintiff can prove no set of facts in support of his claim which would entitle him to relief (see *Conley v. Gibson, 355 U.S. 41 (1957)*). *Cochran*

v. Kansas, 316 U.S. 255, 257-258 (1942). "However inept Cochran's choice of words, he has set out allegations supported by affidavits, and nowhere denied, that Kansas refused him privileges of appeal which it afforded to others.***The State properly concedes that if the alleged facts pertaining to the suppression of... appeal were disclosed as true...there would be no question but that there was a violation of the equal protection clause of the Fourteenth Amendment." *Duncan v. Missouri, 152 U.S. 377, 382 (1894)*.

(4) Whether case was dismissed due to judicial bias because judges refused to rule on claims and issues presented by plaintiff, in violation of the Code of Conduct for United States Judges, Canon 2A. Whether judges actions warrant disqualification under 28 U.S.C. 455(a);

(5) Whether new facts or legal bases not presented in brief would warrant reconsideration;

(6) Whether LEGAL basis in support of belief that this court's final decision was incorrect;

(7) Whether case proceedings involves questions of exceptional importance– see page iii;

(8) Whether Court should grant rehearing or rehearing *en banc* because the case presents important questions of the highest order regarding the overthrow of the United States Constitution;

(9) Whether petition presents substantial question. Whether court of appeal judges should grant Petitioner-Appellant petition for rehearing *en banc* of the ORDER of October 09, 2009. "The motion for reconsideration is denied. *See* 9th Cir. R. 46-3." (See Exhibit J). Also see Mandate Order, filed October 21, 2009 – Rule 41(a). (See Exhibit K).

(10) Whether Court of Appeals has never properly determined the appropriate remedy for the district courts judges failure to disqualify himself under Section 455(a);

(11) Whether petition demonstrates substantial harm that would result from reactivation of proceedings in the

district court for the relief sought to obtain a stay. "The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury." *Perry v. United States, 204 U.S. 330, 358.*

(12) Whether jurisdiction of the federal courts is limited to "cases" and "controversies"; U.S, Const., Art. III, sec.2. Whether District Court and Court of Appeals judges in furtherance of organized crime, caused Don Benny Anderson, to suffer further irreparable injury, covering up transfer of case to the United States District Court for the Western District of Tennessee, where no case or controversies ever existed, to get rid of case. Whether said court lacks jurisdiction of the subject matter. Whether case was transferred from a court where Anderson had standing for each claim he seeks to press and each form of relief sought, in order to conceal repeated and flagrant violations of Canon 2A of the Code of Conduct of United States Judges and 28 U.S.C. § 455(a);

(13) Whether Court of Appeals should order remand and compel district court to issue new order as instructed to avoid relitigation of issues that parties had a fair opportunity to contest and issue new order or judgment;

(14) Whether district court's order is appealable because Court of Appeals can disposes of all claims and issues of all parties and judgment;

(15) Whether Order immediately allowed the collateral order doctrine to become applicable in this case at bar;

(16) Whether judgment sought should be rendered because the pleadings, the discovery and disclosure material on file, and affidavits show that there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law, Fed. R. Civ. P. 56(c); *Suzuki Motor Corp. v. Consumers Union of United States, Inc., 330 F. 3d 1110, 1131 (9th Cir. 2003);.*

(17) Whether motion for summary judgment, Anderson's affidavit was sufficient to shift the burden to government to demonstrate the existence of a triable issue of fact with respect [to relief and compensation], Fed. R. Civ. P. 56(e)(2); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986);*

(18) Whether District Court and Court of Appeals judges abused their proper exercise of discretion in failing to fulfill Anderson's request that court, sua sponte, on its own motion and pursuant 2243, which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies "as law and justice require" order compensation or relief as court would deem just and proper, caused Don Benny Anderson to suffer further irreparable injury, covering up repeated and flagrant violations of Canon 2A of the Code of Conduct of United States Judges and 28 U.S.C. § 455(a);

(19) Whether judges of the district court and court of appeals erred in failing to vacate their findings of fact and conclusions of law due to violations of statutory provisions furthering kidnapping in violation of Title 18 § 1201; domestic terrorism in violation of Title 18 § 2331; forced labor in violation of Title 18 § 1589; involuntary servitude in violation of Title 18 § 1584; peonage, slavery, involuntary servitude or forced labor in violation of Title 18 § 1590; conspiracy against rights in violation of Title 18 § 241; deprivation of rights under color of law in violation of Title 18 § 242 and repeated and flagrant violations of Canon 2A of the Code of Conduct of United States Judges and 28 U.S.C. § 455(a);

(20) Whether District Court and Court of Appeals properly exercised their discretion in refusing to rule whether the United States Parole Commission imposition of sentence on Anderson is consistent with Article III judicial authority and other guarantees of the Constitution;

(21) Whether judges of the district court erred in failing to exercise proper discretion in 2:08-cv-01239-RCJ-LRL and original motion for summary judgment, and by dismissing no. 2:08-cv-01256-JCM-LRL by fraudulently transferring said motion to Memphis TN district court, where judges could find no record of the case;

(22) Whether judges in the U.S. Court of Appeals failed to exercise proper discretion in the combined motion for summary judgment, as required by Rule 56;

(23) Whether District Court and Court of Appeals judges misconduct particularly with respect Orders and Judgment require vacating Orders and Judgment as a remedy for the violation of violations of Canon 2A of the Code of Conduct of United States Judges and 28 U.S.C. § 455(a). . "Acts in excess of judicial authority constitutes misconduct, particularly where a judge deliberately disregards the requirements of fairness and due process." *Geller v. Commission on Judicial Qualifications, (1973) 10 Cal. 3d 270, 286.*

(24) Whether Anderson demonstrates substantial harm that would result from the reactivation of proceedings in the district court;

(25) Whether government failed to address the argument that the district court has been divested of jurisdiction by the filing of notice of appeal;

(26) Whether petitioner's contention that the collateral order doctrine provide grounds for an appeal under 28 U.S.C. Section 1291;

(27) Whether court must address petitioner's argument that collateral order doctrine grounds provides jurisdiction for court of appeals to rule on the merits of case;

(28) Whether petitioner in fact had Article III standing in district court before illegal transfer;

(29) Whether petitioner's request here that this court of appeals shorten the time for government to respond to Anderson request here for immediate proceedings and

deadlines that, in Anderson's view, present issues of irreparable harm and thus necessitate consideration of the this stay motion as soon as possible. Anderson proposes that the government respond to this motion by December 20, 2009. and if Court deems a hearing is necessary, it be set as soon as possible;

(30) Whether Anderson is in involuntary servitude in violation of the Thirteenth Amendment which is imposed by the imprisonment of one who is convicted without evidence. *U.S. Caminito v. Murphy, 222 F. 2d 69.*

(31) Whether the District Court , in the Order, dated April 28, 2009, which stated the following, " Before the court is petitioner's motion for summary judgment (docket #12). This motion shall be denied as moot, as this court transferred the petition for a writ of habeas corpus to the United States District Court for the Western District of Tennessee on November 19, 2008. IT IS THEREFORE ORDERED that the motion for summary judgment (docket #12) is DENIED as moot, as this matter has been transferred to the United States District Court for the Western District of Tennessee.", failed to properly rule on Anderson's facts of this case.

(32) Whether the Court of Appeals was so biased that they deliberately closed their eyes to the 9th Circuit precedent in #31 above, and failed to determine whether Anderson's petition could be amended, as show in the following: "Court's order before: Canby, Thomas, and Ikuta, Circuit Judges. A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See Nascimento v. Dummer, 508 F. 3rd 905, 908 (9th Cir. 2007)* (transfer orders are not directly appealable). Consequently, this appeal is dismissed for lack of jurisdiction."

(33) Whether the District Court and the Court of Appeals acted in conspiracy to alter the identity of the Respondent in this matter. Anderson has named the

Respondent as United States Parole Commission while the courts persist in naming the Respondent as Federal Bureau of Investigation in order to dispose of the issues by claiming lack of jurisdiction.

(34) Whether Anderson's petition seeking habeas corpus relief is appropriate under 28 U.S.C. Section 2241 because he is challenging the fact or duration of his confinement /custody or restraint. Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence. Anderson attacks the execution of sentence by United States Parole Commission and only cognizable under 28 U.S.C. Section 2241. (See Exhibit D – Exhibit 1 – page 3-4.)

(35) Whether the miscarriage of justice exception, *Schlup v. Delo, 513 U.S. 298 (1995,* applies in this case where Anderson's evidence showed innocence and establishes that the court cannot have confidence in any finding of guilt, *Schlup,* 513 U13 U.S. at 317. His constitutional rights were violated and the government did not dispute evidence that he is factually and actually innocent. Anderson has shown that his case falls within the narrow gateway of cases where a fundamental miscarriage of justice has occurred.

Don Benny Anderson
Attorney of Record, pro se

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INTRODUCTION AND REASONS FOR GRANTING REHEARING OR REHEARING *EN BANC (35 40)*

Petitioner-Appellant petition for rehearing *en banc* of the Mandate Order, filed October 26, 2009 – Rule 41(a) (See Exhibit F) and the judgment of this Court, entered 07/29/09 (See Exhibit A) that takes effect by MANDATE October 26, 2009.

Statements Required by Rules 35 and 40: Motion for Rehearing or Rehearing En Banc is warranted because

(1) it is timely filed with in 45 days;

(2) disposition on the merits of case was wrong;

(3) US CODE: Title 28a, Rule 41. Dismissal of Actions, Cornell University Law School, U.S. Code collection TITLE 28 App. > FEDERAL. VI. > Rule 41. Anderson moves court pursuant to Rule 41 (a)(1)(i) for summary judgment. "A motion for summary judgment may be forthcoming prior to answer, and if well taken, will eliminate the necessity for an answer."

Subdivision (b) – In this case tried without a jury, after the close of all evidence Anderson moves for dismissal of government's case under Rule 41 (b) on the ground that government has presented no evidence or document that could pass as evidence and is insufficient for recovery. **Notice to court! Moving party gives notice APPELLANT'S INFORMAL BRIEF is unopposed by Respondent-Appellee.** (9th Cir. R. 27 (Eff. 01/1999). Anderson's own evidence is not conflicting nor does it present questions of credibility. In this non-jury case, judges may pass on conflicts of evidence and credibility and, if judges perform this function of evaluating evidence and testimony and grant the motion on the merits, findings are required. The court should only decide whether there is evidence which would support a judgment for Anderson, plaintiff, and, therefore, findings are not required by Rule 52.

Rule 52 (c) authorizes entry of judgment against the defendant as well as the plaintiff, and earlier than the close of the case of the party against whom judgment is rendered. A motion to dismiss under Rule 41 on the ground that... evidence is legally insufficient should now be treated as a motion for judgment...as provided in Rule 52 (c);

(4) new facts or legal bases not presented in brief; (5) LEGAL basis in support of belief that this court's final decision was incorrect; (6) case proceedings involves questions of exceptional importance– see page iii; (7) Court should grant rehearing *en banc* because the case presents an important questions of the highest order regarding the overthrow of the United States Constitution, political kidnapping of Don Benny Anderson., stopping Anderson's from running for public office, conspirators in this court are attempting to stop Anderson from exposing government lies, crimes and treason. Court's judges are acting in a conspiracy attempting to muzzle Anderson by keeping him as a convicted felon in bogus Judgments. Government agents have admitted they and Judges Canby, Thomas, and Ikuta have committed a multitude of crimes. (See Exhibit AAA, page 7-8). Constitution does not prohibit Anderson from running for public office, but judges are illegally and unconstitutionally keeping him on parole in violation of the Constitution (See *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)* page 18-20 of this document) to stop him from campaigning all over the country. Judges Canby, Thomas, and Ikuta have refused to comply with Article 1, Section 9, of the Constitution by denying habeas corpus privileges to Anderson without judicial review, resulting in violation of his Eighth Amendment, cruel and unusual punishments inflicted and other constitutional rights.

"EMERGENCY MOTION UNDER 9TH CIR. R. 27-3 CASE NO. 09-16311 FOR JUDGMENT/ORDER (See Exhibit AAA)

Facts showing the existence and nature of the claimed emergency:

Notice to court! Moving party gives notice APPELLANT'S INFORMAL BRIEF is unopposed by Respondent-Appellee. (9th Cir. R. 27 (Eff. 01/1999)

The following facts, are based on federal and state agents violation the Supreme Law: Constitution for the United States of America, violation of the laws of the land facts found in Exhibit AA - APPELLANT'S MOTION TO RECONSIDER ORDER, Exhibit A – ORDER, filed July 29, 2009-U.S. Court of Appeals, Exhibit B – ORDER DENYING AND DISMISSING HABEAS PETITION, ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH, AND ORDER RESTRICTING FILING PRIVILEGES IN THIS DISTRICT-U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION, Exhibit C –DON BENNY ANDERSON'S "REPLY TO RESPONDENT" TO RESPONDENT – Filed June 9, 2009, Exhibit D – APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION includes EXHIBIT 1 – ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS (Note: Respondent is correctly identified as United States Parole Commission), and Exhibit E – APPELLANT'S INFORMAL BRIEF show the existence and nature of the claimed emergency.

1. Fact - Since the Respondent-Appellee has not refuted any claims or issues, writ of habeas corpus should be granted immediately.
2. Fact – Anderson's ORIGINAL MOTION FOR SUMMARY JUDGEMENT AND TO DISMISS (Note: Respondent is correctly identified as United States Parole Commission), (See Exhibit D, Exhibit 1, page 1);
3. Fact - PETITIONER-PLAINTIFF'S REBUTTAL TO GOVERNMENT'S DELIBERATELY COMBINED MOTION TO DISMISS NOS. 2:08-cv-01256-JCM-LRL, 2:08-cv-01486-RCJ-PAL, 2:08-cv-01501-KJD-GWF, 2:08-cv-01514-JCM-GWF PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS WAS TIMELY SENT- CLERK RETURNED IT STATING "YOU MUST HAVE AN ORIGINAL MOTION FOR EACH CASE YOU HAVE." (See Exhibit D, Exhibit 1, page 1);
4. Fact - the clerk of the court instructed Anderson to amend his motion. (See Exhibit D, Exhibit 1, page 1);
5. Fact - Anderson, in compliance with the clerk's directive, filed ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL. (See Exhibit D, Exhibit 1, page 1);
6. Fact – A party may amend its pleading once within 20 days after a responsive pleading has been served, or if that period has passed, then by leave of the court or by consent of the other party. Fed R. Civ. P. 15(a). Courts may freely grant leave when justice so requires, and public policy strongly encourages courts to permit amendments. Fed. R. Civ. P. 15(a); *Outdoor Sys., Inc. v. City of Mesa, 997 F.2d 604, 614 (9th Cir. 1993).* The policy of allowing amendments "is to be applied with

extreme liberality." *Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001).* (See Waldrip v. Hall);

7. Court's Clerk granted Anderson leave to amend. (See number #3 above.)
8. Fact – Anderson filed PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS GOVERNMENT'S MOTION. (See Exhibit D, Exhibit 1,
   page 1);
9. Fact – Anderson in Affidavit at page 2 (#6) "Affiant/Plaintiff is serving a United States Parole Commission sentence;" page 3 (#7) "Therefore, Respondent is the United States Parole Commission ;" (See Exhibit D, Exhibit 1, pages 2 and 3);
10. Fact - Gregory A. Brower, United States Attorney and Robert L. Ellman, Appellate Chief and Assistant U.S. Attorney, Counsel for Appellee, - fraudulently claim that the Respondent is the Federal Bureau of Investigation and fatal to jurisdiction of district court. This issue must be resolved immediately so that Anderson can obtain relief. (See Exhibit D, Exhibit 1, pages 60 - 63) and see the following:

"I. Petitioner's decision to treat the FBI as his "warden" by naming the FBI as respondent is also fatal to jurisdiction." (See page 3 of Government's motion).

Response made by Affidavit: "Anderson never claimed to be in the custody of the FBI. Since Anderson claimed that he was in custody and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody, Government should have looked to the facts of the case to determine who the Respondent would truly be. Ground 1 in Petitioner's PETITION FOR A WRIT OF HABEAS CORPUS clearly reveals that U.S. Parole Commission would be the Respondent because they claim they have jurisdiction over Anderson and as result he had to report to Las Vegas

Metropolitan Police and make reports to Parole Officer. Respondent argues that he is in the actual custody and control of the U.S. Parole Commission. There exists a genuine issue necessary to be litigated because of the fraudulent claim above.

J. "Because the petitioner in Padilla filed his petition in a different district that of his actual "warden," the Court held that the district court lacked jurisdiction to hear it. *Id.*" (See page 3 of Government's motion).

Response made by Affidavit: "Anderson does not claim to be confined with a warden. Anderson relies on *Idema v. Rice, 478 f.Supp.2d 47 (D.D.C 2007)* This Court has jurisdiction to hear this Writ. The issue is relevant and there exists a genuine issue necessary to be litigated.

K. Further, Similarly Frivolous Petitions Should Be Prohibited See page 3 of Government's motion): "As demonstrated above, plain defects in jurisdiction and venue make clear that no post-conviction relief petition filed by Petitioner is this district can ever progress to an adjudication on the merits." (See page 3 of Government's motion).

Response made by Affidavit: "At the time original writ of habeas corpus was filed in this court, Don Benny Anderson was residing with Kay Dahlgren at 8724 Litchfield Ave., Las Vegas, NV 89134, with intentions of establishing a permanent residence there and opening a business. This court had jurisdiction because the Convicted Persons Questionnaire (See Exhibit C), was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and because the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL. Petitioner would still be residing in Las Vegas if he had not been forced to return to Illinois, and plans to live in Nevada with Ms. Dahlgren and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediately decision in order to remain in

Nevada so that he would not be compelled to return to Illinois.

Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;

Affiant can collaterally attack the validity of a previous conviction used to enhance United States Parole Commission sentence obtained in violation of right to self-representation or right to counsel;

Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

Purpose of a motion for summary judgment is to head off a full-scale trial conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;

Plaintiff disagrees with this statement. There exists a genuine issue necessary to be litigated. (See Exhibit D, Exhibit 1, pages 60 - 63);" *EMERGENCY MOTION UNDER 9TH CIR.*R. 27-3 CASE NO. 09-16311 FOR JUDGMENT/ ORDER (Exhibit AAA – page 2-7).

"APPELLANT'S MOTION TO RECONSIDER ORDER (Exhibit AA)

In accordance with Circuit Rule 27-10, petitioner-appellant submits this Motion to Reconsider Order in response to court's order, filed July 29, 2009.

In an attempt to not rule on issues presented, court has mislabeled the Respondent's identity as Federal

Bureau of Investigation on its Order, in spite of the fact that APPELLANT'S INFORMAL BRIEF identified UNITED STATES PAROLE COMMISSION Appellee and Petitioner's had amended this error as explained in Appellant's Informal Brief, page 8: "6) Affiant/Plaintiff is serving a United States Parole Commission sentence; 7) Therefore, Respondent is the United States Parole Commission;"

"ORDER Before: CANBY, THOMAS, and IKUTA, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. See *Nascimento v. Dummer, 508 F. 3rd 905, 908 (9th Cir. 2007) (transfer orders are not directly appealable)*. Consequently, this appeal is dismissed for lack of jurisdiction."

"The FBI fraudulently manufactured a conviction in Memphis, TN for Explosive Property Destruction in 1987 with a sentence of 42 years, while Appellant was incarcerated since 1982. (See Exhibit G). It is Anderson's contention that there was no actual trial in absentia, but the conviction was a "paper creation" created by Federal Bureau of Investigation. At the time of the alleged trial, Anderson was in prison and was not aware of this conviction until he was informed of it when required to register with Las Vegas Metropolitan Police during his visit to Nevada on September 18, 2008. Assistant U.S. Attorney, Robert L. Ellman and U.S. Attorney Gregory A. Brower, conspired with U.S. District Judge, James C. Mahan who, knowing that no true physical trial took place, engaged in procedural kidnapping by not addressing claims and issues and by instead transferring this case to the United States District Court for the Western District of Tennessee in violation of the United States Constitution, First Amendment, "Congress shall make no law...right of the people...to petition the government for Redress of Grievances".

The court transferred this petition to Tennessee during "pendency of motion", and failed to provide Appellant with copy of the order. Courts have no authority to "terminate" appealable and make them un-appealable motions simply by refusing to adjudicate them and calling them "moot". A party asserting that an issue is moot must demonstrate that there is no reasonable expectation that the violation will recur". See *County of Los Angeles v. Davis, 440 U.S. 625, 630 Case No. 09-16311 (1979):* accord *In re Campbell, 628 F. 2nd 1260, 1261 (9th Cir. 1980).*

The transfer in this petition was a criminal act in furtherance of the crimes mention in Appellant's Informal Brief. Judge Thomas Anderson, District Court in Tennessee, joined the conspiracies mentioned when he entered an ORDER DENYING AND DISMISSING HABEAS PETITION to cover up the kidnapping of Anderson and to further his kidnapping.

CANBY, THOMAS and IKUTA, Circuit Judges, have the burden of providing a copy of the probable cause statement, docket sheet, indictment, court transcripts, and a pre-sentence report showing that a trial actually took place. Failure to provide these documents will prove that Anderson's allegations of a governmental conspiracy are true.

ANSWERS TO COURT'S OBJECTIONS TO APPELLATE JURISDICTION

District court has been divested of jurisdiction by Anderson appeal. Anderson's case is immediately appealable under the COLLATERAL ORDER DOCTRINE - The collateral order doctrine is a 'practical construction' of the final judgment rule of 28 U.S.C. section 1291. *Digital Equipment Corp. v. Desktop Direct, Inc., 114 S.Ct. 1992, 1995 (1994).* The doctrine allows appeals from 'a small class [of orders] which finally determine claims of right separable from, and collateral

denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.' *Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546 (1949).*

The Supreme Court of the United States delineated the test for the availability of interlocutory appeals, called the collateral order doctrine, for United States federal courts in the case of *Lauro Lines s.r.l. v. Chasser et al., 490 U.S. 495 (1989),* holding that under the relevant statute (28 U.S.C. § 1291) such an appeal would be permitted only if:

1. the outcome of the case would be conclusively determined by the issue;
2. the matter appealed was collateral to the merits; and,
3. the matter was effectively unreviewable if immediate appeal were not allowed.

Because the district court has transferred this petition to Tennessee, even though they knew that no trial had ever taken place in that District, this matter has been made effectively unreviewable in this Circuit. It is then imperative that CANBY, THOMAS and IKUTA, Circuit Judges, act to prevent imposition of further irreparable harm to Anderson and to provide due process which can be achieved by granting relief.

Anderson has proved collateral order doctrine proof and evidence and provided grounds for an appeal under 28 U.S.C. Section 1291, in APPELLANT'S INFORMAL BRIEF

If an improper appeal was taken, the district court retains its jurisdiction to act on the case, [judges of this court of appeals using its supervisory power should then order a new impartial district court judge, not involved in any of Anderson's cases to assume jurisdiction and proceed as instructed by this court providing relief requested], but there is no improper appeal in case at bar.

CANBY, THOMAS and IKUTA, Circuit Judges, joining RICO, criminal conspiracy and procedural kidnapping, knew from APPELLANT'S INFORMAL BRIEF that U.S. Attorney Gregory A. Brower, Chief Appellant and Assistant U.S. Attorney, Robert L. Ellman and U.S. District Judge, James C. Mahan, were acting in a criminal conspiracy by allowing both district court and this court of appeals itself to be made an accomplice in willful disobedience of law, aiding and abetting organized crime, in violation of RICO laws. They knew district court had no authority to "terminate" appealable petition and make it un-appealable by committing criminal acts against Anderson, a victim of political kidnapping, who was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; victim of a conspiracy against rights in violation of Title 18 Section 241. Anderson is also a victim of deprivation of rights under color of law in violation of Title 18 Section 242 since court transferred petition for writ of habeas corpus to Tennessee, knowing the Federal Bureau of Investigation had created a fictional crime of Explosive Property Destruction in 1987, with a sentence of 42 years, appearing in Anderson's FBI rap sheet. (See Exhibit G). This was done with the full knowledge that Anderson had been incarcerated since 1982, that no actual trial took place in absentia although a fictional sentence of 42 years was created, and that the United States District Court for the Western District of Tennessee, Judge Thomas Anderson engaged in procedural kidnapping to cover up that fact. This Court of Appeals is covering up facts presented in APPELLANT'S

INFORMAL BRIEF by issuing this court's ORDER, which constitutes an overt act of procedural kidnapping in violation of the Title 18 U.S.C. Section 1201.

It is self-evident, from court's ORDER, that the court is biased and prejudiced against Appellant and has knowingly and willingly with criminal intent combined, conspired, agreed and did act in favor of criminals in the government and court only seeing its own arguments, but refused to consider or the points raised in APPELLANT'S INFORMAL BRIEF and in his Legal Argument – APPELLANT'S MOTION TO RECONSIDER ORDER:

"ANDERSON'S LEGAL ARGUMENTS

In the ORDER, dated April 28, 2009, Court stated "Before the court is petitioner's motion for summary judgment (docket #12). This motion shall be denied as moot, as this court transferred the petition for writ of habeas corpus to the United States District Court for the Western District of Tennessee on November 19, 2008. IT IS THEREFORE ORDERED that the motion for summary judgment (docket #12) is DENIED as moot, as this matter has been transferred to the United States District Court for the Western District of Tennessee."

[The court order (Exhibit B) from the Western Division of Tennessee states that "It is unclear from the petition whether Anderson challenges a federal or state conviction. Because Anderson invokes 28 U.S.C. § 2241, the Court will proceed under the assumption that Anderson challenges a federal conviction." This case was transferred to the Tennessee court which could find no record of any conviction there.] (See Exhibit AA – page 8).

Anderson has provided conclusive evidence that no trial ever took place in Tennessee. And since the Tennessee court has no record of this fictional conviction, the 42-year conviction should be considered void. Anderson's current parole is based on that alleged conviction, since all other sentences have already been completed. This court should, based on these facts, render a writ of habeas corpus in Anderson's favor. Any other ruling is a violation of Anderson's rights under the Eighth Amendment of the Constitution for the United States of America.

"Court transferred this petition to Tennessee during "pendency of motion", and failed to provide Appellant with copy of the order. Courts have no authority to "terminate" appealable and make them unappealable motions simply by refusing to adjudicate them and calling them "moot". "A party asserting that an issue is moot must demonstrate that there is no reasonable expectation that the violation will recur". See *County of Los Angeles v. Davis, 440 U.S. 625, 630 Case. No. 09-16311 (1979): accord in re Campbell, 628 F. 2nd 1260, 1261 (9th Cir. 1980)."* (See Exhibit AA – page 5)

"Anderson's motions cannot be moot because the court had jurisdiction and could have provided a remedy. [District Court took evasive action of transferring Appellant's petition to Tennessee, because they realized that they could not rule for the government as no evidence had been submitted to support government's position.] Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the fact. See *Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998.*

To grant a motion for summary judgment, a court must determine that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, (1986).* In considering a motion for summary judgment, the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party. Id. at 255. At the summary judgment stage the Judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson, supra at 249.*

Plaintiff has shown that this court has venue and jurisdiction. Equitable remedies that the court can provide in habeas cases include an order freeing Plaintiff from penalties resulting from fictional convictions, sentences, and judgments that persist beyond the end of detention, appropriate compensation, and expungment of all State and Federal records to be turned over to Plaintiff, least Don Benny Anderson, Plaintiff, suffer further irreparable injury.

Since all Courts have acted in complete absence of jurisdiction to create a lawful conviction of sentence, Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies "as law and justice require" order compensation or relief as this court would deem just and proper. See case of *Ervin McGee, Jr. vs. City of Tulsa (2007)* where $14.5 million awarded for wrongful conviction and imprisonment.

Collateral review of all federal and state judgments are necessary because Plaintiff has made a showing he has suffered from actual harm from them. Plaintiff has reasonable expectation that he will have to register again in Nevada until all cases are resolved, and fraudulently alleged crimes and/or fictionally created crimes removed from his rap sheet and all federal and state records, and he will have to register in Florida as well as in other states. Business, travel privileges and liberties are restricted.

In the Government's Response In Opposition To Motion For Summary Judgment, dated December 23, 2008, the Government makes mention of the Petitioner's

58-page motion for summary judgment. The Petitioner's motion actually included 67 pages. By overlooking the final 9 pages of the motion, the Respondent disregarded the allegations contained therein.

The Government provided no affidavits and no authorities in its so-called Government's Response In opposition to Motion For Summary Judgment, as required of the non-moving party in opposition to that motion for summary judgment. Local Rule 7-2(b). Thus the court should grant Plaintiff's motion and dismiss the non-moving party's motion and claims.

What is relevant to this Informal Brief is the fact that the record of this case contains not one affidavit by government or a piece of paper from appellees that would qualify as evidence under the Rules of Civil Procedure. Although the record includes numerous fraudulent governmental statements, there is nothing, beyond the conspiracy of the U.S. Attorney Gregory A. Brower, Chief Appellate and Assistant U.S. Attorney, Robert L. Ellman and the corruption of the "fact-finder" U.S. District Judge, James C. Mahan, in denying Appellant's motion as "moot" and transferring the petition for writ of habeas corpus to Tennessee.

The inability of a federal court to "review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy." *Liner v. Jafco, Inc., 375 U.S.301, 306 n.3 (1964).* "Federal courts are without power to decide questions that cannot effect the rights of litigants in the case before them." *North Carolina v. Rice, 404 U.S. 244, 246 (1971) (per curiam).*

In *Lane v. Williams, 455 U.S. 624 (1982),* the court observed: " Collateral review of final judgment... is not warranted absent a showing that the complainant suffers actual harm from the judgment that he seeks to avoid." In this case, Anderson has demonstrated collateral consequences, which are made manifest by the court's Order, and are likely to recur.

It is evident that this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a court's supervisory power: (1) to implement a remedy for violation of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter future illegal conduct. *United States v. Hasting, 461 U.S. 499, 505 (1983); United States v. Simpson, 927 F.2d 1088,1090 (9th Cir. 1991.* All three of these bases apply to Anderson's case.

A court must not allow itself to be made an accomplice[ ] in willful disobedience of law." *McNabb v. U.S., 318 U.S. 332, 345, 63 S. Ct. 608, 615, 87 L Ed. 819, (1943).* "Guided by consideration of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Hastings, 461 U.S. 499, 505, 103 S. Ct. 1974, 1978, 76 L. Ed. 2d 06 (1983).*

Respectfully Submitted,

s/ Don Benny Anderson
Don Benny Anderson"

(See Exhibit AA- APPELLANT'S MOTION TO RECONSIDER ORDER pages 4-12)

As clearly explained in Anderson's Legal Argument, this court has jurisdiction. The District Court motion, filed October 16, 2009, conclusively demonstrates bias in that Anderson's arguments were complete ignored and not addressed in the decision to deny the motion. The court stated "The motion for reconsideration is denied. *See 9th Cir. R. 27-10.* The emergency motion is denied. No further filings shall be accepted in this closed case.

“STATEMENT OF REASONS SUPPORTED BY PERTINENT AUTHORITY TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE OF DON BENNY ANDERSON;

UNSWORN AFFIDAVIT/DECLARATIONS OF DON BENNY ANDERSON UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S. SECTION 1746

1. My name is DON BENNY ANDERSON. I am sixty-eight (68) years of age, having been born on December 19, 1940; in Springfield, Illinois;
2. I am of sound mind and fully competent to make this Affidavit/ Declarations under the penalty of perjury;
3. This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;
4. This Affidavit/Declarations will stand for Truth and Fact before United States Court of Appeals for the Ninth Circuit in this MOTION TO RECONSIDER ORDER;
5. This Affidavit/Declarations is made on personal knowledge and set forth facts that are admissible evidence;
6. Appellant requested this Court to consolidate the following co-mingled cases: 1) *DC No. 08-cv-01239-RCJ-LRL*, IN THE FURTHERANCE OF JUSTICE ORDER WRIT OF HABEAS CORPUS BE GRANTED NOW, DISTRICT OF NEVADA, LAS VEGAS and 2) DC ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS *NO. 2:08 –CV-01256-JCM-LRL*, and to exercise supervisory power and rule on both motions;

7. Appellant believes that these are extremely substantial issues which do require further argument, because they reveal that laws of the land have been violated;

8. United States Constitution, First Amendment: "Congress shall make no law... abridging...the right of the people... to petition the government for Redress of Grievances." This right was violated by the all judges and courts by not addressing Anderson's claims and issues;

9. It is evident that this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a court's supervisory power: (1) to implement a remedy for violation of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter future illegal conduct. *United States v. Hasting, 461 U.S. 499, 505 (1983); United States v. Simpson, 927 F.2d 1088,1090 (9th Cir. 1991.* All three of these bases apply to Anderson's case.

10. MOTIONS ARE NOT MOOT AND COURT OF APPEALS HAS JURISDICTION AND RELIEF CAN BE GRANTED.

FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 6th day of August 2009.

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938
217 246-4999"
(See Exhibit AA – pages 2-4).

"The merits of this APPELLANT'S MOTION TO RECONSIDER ORDER concern court's disposition of the factual matters underlying the case. Under governing law a court is required to "construe the complaint in the light most favorable to the plaintiff and its allegations must be taken as true," any ambiguities or uncertainties concerning the "sufficiency of the claims must be resolved in favor of the plaintiff."

A "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hughes v. Rowe, 449 U.S. 5, 10 (1980); Scheuer v. Rhodes, 416 U.S. 232, 236 (1979)); Conley v. Gibson, 355 U.S. 41, 45 (1957).* In judgment, the court must consider the pleadings, related documents, and evidence in a light most favorable to the non-moving party. *Adickes v. Kress Co., 398 U.S. 144 (1970).*

"Moreover, in analyzing a motion for [reconsideration], the court is obligated to view the record and the inferences to be drawn therefrom, in the light most favorable to the non-movant." *Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987). Id. at 298. See Walker v. Washington, 627 F. 2nd 541, 545 (D.C. Cir. 1980) (per curiam).* Thus, this court's Order of the factual matters in this case is not "so clear as to make [dismissal] proper." *Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987).*

All of the government's orders, trials, judgments, convictions, sentences, actions, allegations, and statement in its pleadings rest on fraudulent assumptions –by law – therefore the government's entire case must be dismissed for fraud because: "Fraud destroys the validity of everything into which it enters," *Nudd v Burrows, 91 U.S. 426;* "Fraud vitiates everything," *Boyce v. Grundy, 3 Pet. 210;* "Fraud vitiates the most solemn contracts, documents and even judgments," *U.S. v. Throckmorton, 98 U.S. 61.*

If the court and government cannot now produce records requested, then the Order issued by judges should have legal authority. Judges know that their Order was arbitrary and capricious, and issued with criminal intent - to create irreparable harm to Appellant, knowing the government failed to meet the criteria for dismissal. On appeal, this appellate court should review issues raised by de novo review.

The Supreme Court has instructed and reviewing court is required to undertake a "searching and careful" review of the facts. *Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415, 416 (1971); see also Wawszkiewicz v. Department of Treasury, 670 F. 2d 296, 301 & n. 42 (D.C. Cir. 1981); Ethyl Corp. v. EPA, 541 F.2d 1, 34-37 (D.C.Cir.) (en banc), cert. denied, 426 U.S. 941 (1976).* Appellant respectfully submit that the "searching and careful" review that Supreme Court requires has never been performed in this case. The Court is urged to examine the facts of the case with a careful and critical eye, including the statements and affidavits of Anderson. Such a review will show that government's position is completely unsupported by the evidence presented. Therefore the court, in its ORDER for dismissal, steered away from a de novo review. Dismissal of this appeal is particularly inappropriate in this case given the need for judicial consideration of the substantial record submitted during the proceedings. Appellant should be granted a fair determination of all facts presented.

FULL CONSIDERATION OF ALL FACTORS – CANBY, THOMAS, and IKUTA, Circuit Judges, must show proper consideration of all factors, both favorable and unfavorable, but they failed to do so. See ***Bhasis** v. Gonzales, 423 F. 3d 977, 986-87 (9th Cir. 2005)* (holding that the BIA abused its discretion by improperly discrediting petitioner's affidavit as "self-serving" and failing to properly consider the factors relevant to eligibility for relief). Court abused its discretion, did not engage in substantive analysis and articulate reasons for its decision. Judges erred by denying motions while failing to articulate their reasons for denying motions individually and in a complete and proper order, and by failing to consider all attached evidence properly in an impartial manner. Because court entertained motions in the first instance, and then failed to provide specific and cogent reasons for its decision, petitioner is left without a reasoned decision to review and challenge in this APPELLANT'S MOTION TO RECONSIDER ORDER. Court must issue an Order that fully explains the denying of all motions included in attached exhibits individually as a result of this Motion to Reconsider Order, and must address and rule upon each motion, giving specific, cogent reasons for the grant or denial. Streamlining procedures without court weighing the favorable and unfavorable factors and indicating with specificity that court had heard and entertained each specific fact and weighed the favorable and unfavorable is nothing but "procedural kidnapping", in violation of Title 18 Section 1201 and the First Amendment.

The Court of Appeals has not presented a "point by point comparison" of all relevant affidavit/declarations, claims, issues and questions. The court and government do not dispute Appellant's legal points with evidence showing he is wrong. Court and Government do not dispute the likelihood that Appellant will prevail on the merits. Nor does the court or government present new case authority in support of any claim that Appellant is unlikely to prevail on the merits.

Appellant satisfies the Standard for Irreparable harm. Appellant has demonstrated injury that is "certain and great;...not theoretical.". D.C. Circuit's long-standing recognition that availability (or unavailability) of possible compensatory remedy plays a crucial role in the irreparable harm analysis: The possibility that adequate compensation or other corrective relief will be available at a later date, in the ordinary course of litigation, weights heavily against a claim of irreparable harm. *Wisconsin Gas, supra, 758 F2d at 674 (quoting Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958)).* The essence of "irreparable" harm is that such harm is not susceptible of repair through later judicial relief in an action for monetary damages. Appellant argues that he has shown irreparable injury because he will not be able to recover money damages from the government.

Demonstrated irreparable harm identified by Anderson includes his inability to move to Nevada and to open a gun business there. Anderson's travel is restricted and he was forced to return to Illinois after a week. He is unable to travel outside his immediate District for any reason without written permission from his supervisor. Anderson is required to report to Parole Officer monthly, when changing employment or residence, and when contacted by any law enforcement. He cannot possess firearms, and cannot have any contact with other convicted felons and must report same, should it occur. His right to hold office will not be restored until his period of supervision is concluded. Anderson is entitled to compensation for the premeditated kidnapping and destruction of his good name, family and loss of business opportunities. He would like to travel abroad and throughout the United States, to run for public office, to vote in state and federal elections, to sit on a jury, and to go into business immediately. He may suffer future false arrest, conviction and sentence on fictional charges such as this case at bar, and have previous convictions used against him as long as false arrest records, conviction records and sentencing records remain on his record.

What is paramount to this APPELLANT'S MOTION TO RECONSIDER ORDER is the fact that the Record of this case contains not one affidavit by government or a piece of paper from appellees that would qualify as evidence under the Rules of Civil Procedure. Although the Record includes numerous fraudulent government statements, there is nothing to support appellees' transfer of this case to Tennessee or the Order to dismiss.

Varsic v. U.S. District Court, 607 F. 2d 245, 251 (9th Cir. 1979)(transfer orders under 28 U.S.C. Section 1406 are not directly appealable). In this case at bar, district court had personal jurisdiction over Anderson and issues raised. Nor was district court transfer order issued under 28 U.S.C. Section 1406 which is not directly appealable.

Under 28 U.S.C. section 1406(a), a district court may "transfer a case brought in the wrong division or district" to a district where it might have been originally brought if it is "in the interest of justice". In deciding whether transfer is appropriate under section 1406(a), courts are to look at whether the transfer is in the interest of justice; that is, whether the transferee forum is convenient to the parties and witnesses as well as what impact transfer has on the efficient administration of the court system. *Wild v. Subscription Plus, Inc., 292 F. 3d 526, 530 (7th Cir. 2002).* When evaluating the convenience of the parties and witnesses, a court can consider: 1) the plaintiff's choice of forum; 2) the situs of material events; 3) the relative ease of access to sources of proof; 4) the convenience of the witnesses; and 5) the convenience to the parties. *Coleman v. Bucheit, Inc., No. 03 C 7495, 2004 WL 609369, at *2 (N.D. Ill. Nov. 3, 2004).* The balancing of these factors is committed to the sound discretion of the trial judge *Cont'l Ins. Co. v. M/V Orsula, 354 F. 3rd 603, 608 (7th Cir. 2003)* and the decision whether to transfer a case on venue grounds is "largely a discretionary determination," to be decided on a case by case basis. *Von Holdt v. Husky Injecting Molding Sys. Ltd., 887 F.Supp. 185, 188 (N.D. Ill. 1995).* Evidence presented show that Tennessee was the wrong venue for this case. Since the United States District Court of

Nevada had proper venue and jurisdiction, this Court of Appeals now has complete lawful jurisdiction.

Anderson declares the source of information relied on is unaltered court tape recordings and perfect transcripts made from them, without omissions or inaudible portions from the following court cases to reveal that he is a victim of political kidnapping and was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; victim of a conspiracy against rights in violation of Title 18 Section 241; and a victim of deprivation of rights under color of law in violation of Title 18 Section 242.

CONCLUSION - District Court and Court of Appeals orders in the case at bar breed contempt, destroy domestic tranquility, overthrow the United States Constitution by blocking the Right to Petition for Redress of Grievances by blocking meaningful access to the court, or covering up violation by the Government of any Article of the Constitution, or the refusal of the Government to justify and/or cease its unlawful behavior. " (See Exhibit AA – pages 12-18).

"For the reasons set forth above, the ORDER to dismiss for lack of jurisdiction should be vacated and this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a court's supervisory power: (1) to implement a remedy for violation of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter future illegal conduct. *United States v. Hasting, 461 U.S. 499, 505 (1983); United States v. Simpson, 927 F.2d 1088,1090 (9th Cir. 1991.* All three of these bases apply to Anderson's case.

"A court must not allow itself to be made an accomplice [ ] in willful disobedience of law" *McNabb v. U.S., 318 U.S. 332, 345, 63 S. Ct. 608, 615, 87 L.Ed. 819 (1943).* "Guided by considerations of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Hastings, 461 U.S. 499, 505, 103 S. Ct., 1974, 1978, 76 L. Ed. 2d 96 (1983).*

REQUIREMENT FOR DUE PROCESS

Constitutional Basis – Petitioner is entitled to Fifth Amendment due process right to a fair hearing or decision in an Order. Court's Order is a denial of due process under the Fifth Amendment because the proceeding or decision-making process was fundamentally unfair and Petitioner was prevented from reasonably having his case heard by impartial judges. Judges have denied Petitioner due process by covering up that the United States Parole Commission unconstitutionally sentenced Anderson, and he was tried in absentia in federal courts without notice of trials or being present. Federal Bureau of Investigation manufactured fictional convictions which came to light when Anderson was required to register with the local police in Las Vegas. All federal and state courts acted in the complete absence of jurisdiction. This court knows it is a violation of Anderson's rights under the Fifth Amendment of the Constitution to try him in absentia and for all federal and states courts to kidnap Anderson in violation of our Constitution for the United States of America. Court must consider the evidence, each Declaration in affidavits submitted by petitioner in each individual motion presented, and meet due process requirements. Due process, under the Fifth Amendment requires that violation of the United States Constitution, First Amendment, "Congress shall make no law...right of the people...to petition the government for Redress of

Grievances" must be addressed and grievances adjudicated.

The attached Certificate of Service lists all Exhibits, including motions which were dismissed by Courts without due process, violating Anderson's Fifth Amendment rights."

(See Exhibit AA – pages 19-20).

The Court should grant rehearing or rehearing *en banc* because of violation of the Fifth Amendment right to due process by Court of Appeals judges.

This motion is timely filed. Pursuant to Rule 41(d)(1) of the Federal Rules of Appellate Procedure and Circuit Rule 41, Appellant Don Benny Anderson hereby requests the Court to stay issuance of its mandate pending Appellant's Motion for Panel Rehearing, Petition for Rehearing *EN BANC*.

Under the Federal Rules of Appellate Procedure, "The timely filing of a petition for panel rehearing, petition for rehearing en banc, or motion for stay of mandate, stays the mandate until disposition of the petition or motion," FED. R. APP. P. 41(d)(1) By operation of law, such a stay remains in place until Court's final disposition of this petition. Anderson, seeking stay petition, presents substantial questions and there is good cause for a stay. Anderson files petition seeking a stay only pending this Court's final disposition of the petition.

Judges' disposition on the merits of case was wrong in light of Informal Package for Pro Se Appellants (April 2009) page 4 "I. THE COURT OF APPEALS...reviews final decisions of the United States District Court...court looks at the district court or administrative record in the case and the briefs of the parties to see if there are any constitutional, legal, or factual mistakes. NO NEW EVIDENCE OR TESTIMONY CAN BE PRESENTED IN THIS COURT." The only evidence was presented by Anderson. Government failed to present any rebuttal in opposition. The Court should grant rehearing or rehearing *en banc* because of violation of the Fifth Amendment right to due process by Court of Appeals judges.

Case was dismissed due to judicial bias because judges refused to rule on claims and issues presented by plaintiff, in violation of the Code of Conduct for United States Judges. Canon 2A of the Code of Conduct for United States Judges states that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." *175 F.R.D. 363, 365 (1998),* warranted disqualification under 28 U.S.C. 455(a). "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned." In accordance with *Liljeber v. Health Services Acquisition Corp., 486 U.S. 847, 862 (1988),* in refusing to vacate the district court's findings of fact and conclusions of law, the Court in *Liljeberg v. Health Serviced Acquisition Corp.* states that, in determining whether a judgment should be vacated for violation of Section 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. Applying that standard to the facts of this case, the court of appeals should conclude that violations of the Code of Conduct and Section 455(a) are serious; full retroactive disqualification is necessary to correct injustice and help restore the damage to public confidence in the judicial process. It will penalize government, who is not innocent, aware of the misconduct and criminal acts committed in furtherance of injustice, and it would have a great deterrent effect on criminal activity in the government. The above facts show good cause for stay.

See Fed. R. App. P. 35 & 40; 9th Cir. R. 23 & 40;

New facts or legal bases not presented in brief warrant reconsideration.

LEGAL basis in support of belief that this court's final decision was incorrect: See *Irving v. United States*, 162 F.3d 154, 160 (1st Cir. 1998) (en banc), admonishing that the federal courts "have an affirmative obligation to examine jurisdictional concerns on their own initiative" even if the parties have neglected them; *Berner v. Delahanty*, 129 F.3d 20, 23 (1st Cir. 1997), noting "that a court should first confirm the existence of rudiments such as jurisdiction . . . before tackling the merits of a controverted case". District Court made their decision based on *Nascimento v. Dummer, 508 F.3rd 905, 908 (9th Cir. 2007),* but did not question lower court's jurisdiction before dismissing. They did not follow the criteria set forth in *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)* which requires judicial review of all facts.

Section 2.01 "IT IS EMPHATICALLY THE PROVINCE AND DUTY OF THE JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS."

> (a) *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)* "Congress cannot pass laws that are contrary to the Constitution, and it is the role of the Federal courts to interpret what the Constitution permits.

Marbury v. Madison is a landmark case in United States law. It formed the basis for the exercise of judicial review in the United States under Article III of the Constitution.

Marbury v. Madison was the first time the Supreme Court declared something "unconstitutional," and established the concept of judicial review... (the idea that courts may oversee and nullify the actions of another branch of government). The landmark decision helped define the "checks and balances" of the American form of government.

The concept was also laid out by Alexander Hamilton in Federalist No. 78:...

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It, therefore, belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Section 2.02 IT IS EMPHATICALLY THE PROVINCE AND DUTY OF THE JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS.

Inscription on the wall of the Supreme Court Building from Marbury v. Madison, in which Chief Justice John Marshall outlined the concept of judicial review.

Marshall stated: "The Government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right." One of the key legal principles on which Marbury relies is the notion that for every violation of a vested legal right, there must be a legal remedy.

A federal court has a "special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'" If a court does not have the power to hear a case, it will not issue dicta. Consequently, with exceptions not applicable here, a federal court must decide whether it has jurisdiction before discussing the merits of the case. Because of the canon of constitutional avoidance (i.e., where a statute can fairly be interpreted so as to avoid a constitutional issue, it should be so interpreted), courts generally deal with the constitutional issues only if necessary.

Marshall then looked to Article III of the Constitution, which defines the Supreme Court's original and appellate jurisdictions (see Relevant Law above). Marbury had argued that the Constitution was only intended to set a floor for original jurisdiction that Congress could add to. Marshall disagreed and held that Congress does not have the power to modify the Supreme Court's original jurisdiction.

This conflict raised the important question of what happens when an Act of Congress conflicts with the Constitution. Marshall answered that Acts of Congress that conflict with the Constitution are not law and the Courts are bound instead to follow the Constitution, affirming the principle of judicial review. In support of this position Marshall looked to the nature of the written Constitution—there would be no point of having a written Constitution if the courts could just ignore it. "To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained?" Marshall also argued that the very nature of the judicial function requires courts to make this determination. Since it is a court's duty to decide cases, courts have to be able to decide what law applies to each case. Therefore, if two laws conflict with each other, a court must decide which law applies. Finally, Marshall pointed to the judge's oath requiring them to uphold the Constitution, and to the Supremacy Clause of the Constitution, which lists the "Constitution" before the "laws of the United States." Part of the core of this reasoning is found in the following statements from the decision:

It is emphatically the province and duty of the Judicial Department [the judicial branch] to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.

So, if a law [e.g., a statute or treaty] be in opposition to the Constitution, if both the law and the Constitution apply to a particular case, so that the Court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law, the Court must determine which of these conflicting rules governs the case. This is of the very essence of judicial duty. If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.

Those, then, who controvert the principle that the Constitution is to be considered in court as a paramount law are reduced to the necessity of maintaining that courts must close their eyes on the Constitution, and see only the law [e.g., the statute or treaty]."

"*In Moore v. Czermiak, Court of Appeals No. 04-15713 (2009),* petitions for rehearing and rehearing en banc, "it was observed that a federal appellate court "lacks the factfinding and record-developing capabilities of a federal district court". They simply decline to base decisions on arguments and theories that the state has never offered, and which it has therefore forfeited. In Moore, it was stated that "It would work great prejudice to the petitioner were we to affirm the denial of his habeas petition on the basis of such speculative arguments and assertions offered for the first time by a member of this court—arguments and assertions to which Moore has had no occasion, opportunity, or reason to respond. Without any indication from the state as to what evidence it may have reason to respond. Without any indication from the state as to what evidence it may have possessed and why that evidence may have rendered counsel's failure to suppress...,it is simply impossible for a petitioner to respond to the states 'evidence' or 'arguments'."

"Not only did the state forfeit any such contentions by not raising them on appeal, but it first forfeited these theories in federal court by failing to raise them in the district court." See *Singleton v. Wulff, 428 U.S. 106, 120 (1976).*

"The decision to consider an issue not raised below is discretionary, and such an issue should not be decided if it would prejudice the other party." The Supreme Court has explained that this forfeiture rule "is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide" and that "it is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." *Hormel v. Helvering, 312 U.S. 552, 556 (1941).*

Continuing in their opinion re: *Moore,* the court cited *In Stuard v. Stewart, 401 F. 3d 1064 (9thCir. 2005),* "we squarely rejected the notion that his court could create argument for the state that it did not raise on appeal." They also held that "we are not going to construct an argument for the state sua sponte, depriving [the defendant's] counsel of a fair chance to respond to it". "We apply that rule with same vigor against criminal defendants; we should be no less vigorous in applying it against the government." *United States v. Ziegler, 497 F.3d 890, 901 (9th Cir. 2007)."* (See Exhibit AAA – pages 16-17).

Whether there exist "a substantial question" and "good cause" for a stay turns on the applicant's "reasonable probability of succeeding on the merits and whether the applicant will suffer irreparable injury." *Books v. City of Elkhart, 239 F.3d 826, 827 (7th Cir.), cert. denied.* Existence of "substantial" issues constitutes "good cause" that would require the court to grant the stay. Both elements are present here.

Appellant satisfies the Standard for Irreparable harm. Appellant has demonstrated injury that is "certain and great;...not theoretical.", D.C. Circuit's long-standing recognition that availability (or unavailability) of possible compensatory remedy plays a crucial role in the irreparable harm analysis: The possibility that adequate compensation or other corrective relief will be available at a later date... weights heavily against a claim of irreparable harm. *Wisconsin Gas, (quoting Virginia Petroleum Jobbers Ass'n v. FPC,* ...The essence of "irreparable" harm is that such harm is not susceptible of repair through later judicial relief in an action for monetary damages. Appellant argues that he has shown irreparable injury because he will not be able to recover money damages from government."...

Anderson has shown irreparable injury by courts not tailoring remedies "as law and justice require" and provide compensation and relief as is deemed just and proper. Corrupt judges refuse to follow the criteria set forth in *Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803)* which requires judicial review of all facts. "IT IS EMPHATICALLY THE PROVINCE AND DUTY OF THE JUDICIAL DEPARTMENT TO SAY WHAT THE LAW IS." One of the key legal principles on which Marbury relies is the notion that for every violation of a vested legal right, there must be a legal remedy. Anderson has requested one billion dollars from the United States Parole Commission for false imprisonment and kidnapping. (See Exhibit D of Exhibit H).

Anderson also shows irreparable injury in that he is unable to establish a residence and gun sales business in Nevada, travel for more that a week, family relations have been destroyed, having to report to Parole Officer, being denied his Second Amendment right to bear arms, cannot have contact with law enforcement officials and felons and must report same should they occur, being denied opportunities to run for Public Office, not allowed to run for the office of President exposing government and judicial treason, slavery, lives stolen and destroyed via procedural kidnappings, campaigning across the country revealing Presidential-Appointed Criminals, acting under color of law, as long as bogus convictions remain on his record ...

Streamlining procedures without court weighing the favorable and unfavorable factors and indicating with specificity that court had heard and entertained each specific fact and weighed the favorable and unfavorable is nothing but "procedural kidnapping", in violation of Title 18 Section 1201." (See Exhibit AA – Appellants Motion to Reconsider Order, page 8.)

APPELLANT'S INFORMAL BRIEF contained... claims/issues raised as mandated by questions by the court, none of which have been addressed by this court: (See Exhibit E – pages 3-4).

No conflict of evidence or credibility question exists; granting this court authority to treat as a motion for judgment as provided in Rule 52(c) to eliminate the necessity for an answer, or dismiss due to judicial bias because courts refuse to rule on claims and issues presented by plaintiff, in violation of the Code of Conduct for United States Judges. Canon 2A of the Code of Conduct for United States Judges states that "[a] judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." 175 F.R.D. 363, 365 (1998), warranted disqualification under 28 U.S.C. 455(a). "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonable be questioned." In accordance with *Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 862 (1988),* in refusing to vacate the district court's findings of fact and conclusions of law, the Court in *Liljeberg v. Health Serviced Acquisition Corp.* states that, in determining whether a judgment should be vacated for violation of Section 455(a), it is appropriate to consider the risk of injustice to the parties in the particular case, the risk that the denial of relief will produce injustice in other cases, and the risk of undermining the public's confidence in the judicial process. Applying that standard to the facts of this case, the court of appeals should conclude that violations of the Code of Conduct and Section 455(a) are serious; full retroactive disqualification is necessary to correct injustice and help restore the damage to public confidence in the judicial process. It will penalize government, who is not innocent, aware of the misconduct and criminal acts committed in furtherance of injustice, and it would have a great deterrent effect on criminal activity in the government. The above facts show good cause for stay.

The question of whether showing of actual bias is required before disqualification is available to remedy flagrant and concealed violations of 28 U.S.C. § 455(a) is a substantial one for purposes of Rule 41(d)(1). The Supreme Court found the issue of remedies for violations of 28 U.S.C. § 455(a) deserving of its attention in *Liljeberg v. Health Services Acquisition Corp. 486 U.S. 847 (1988).*

The Court found that the district judge committed clear and repeated violations of the Code of Conduct for United States Judges. The Court also found that the district judge's "conduct destroyed the appearance of impartiality" in violation of 28 U.S.C. § 455(a), which required that he disqualify himself at the time the violations began to occur.

Unfortunately, the filing of judicial misconduct complaints has often not resulted in meaningful review of the underlying misconduct charges. Courts have been quick to dismiss the complaints without investigation and without providing any reasons. The public perceives, rightly or wrongly, that charges of misconduct will not be taken seriously.

Anderson respectfully submits that District Judge Robert C. Jones should have been disqualified as October 24, 2008, the date of his earliest known violation of 28 U.S.C. § 455(a) and the Code of Conduct of United States Judges.

STATUTORY PROVISION AND CANONS INVOLVED - Section 455(a) of Title 28 of the United States Code provides: "Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be question." Canon 2A of the Code of Conduct for United States Judges states that "[a] judge should respect and comply with the law and should act at all time in a manner that promotes public confidence in the integrity and impartiality of the judiciary." *175 F.R.D. 363, 365(1998).*

Judge Jones demonstrated abuse of power, bias or prejudice committing fraud on the court by the court issuing JUDGMENT IN CIVIL CASE and ORDER claiming: "The Court denies the Petition because it is clear that Petitioner is not entitled to relief, 28 U.S.C. Section 2243" and knowingly and willingly not addressing claims point by point in order to further and cover up Department of Justice, United States Parole Commission, Bureau of Prisons organized crime. (See EXHIBIT F - Appellant's Informal Brief, page 8 and What are the facts of your case? pages 2-8.) Such disqualification would require vacatur of the district court's findings of fact and conclusions of law.

The requirement that Anderson show actual bias is inconsistent with the language of 28 U.S.C. § 455(a). Under that provision, "what matters is not the reality of bias or prejudice but its appearance." *Liteky v. United States, 510 U.S. 540, 548 (1994)*...Moreover, were the Supreme Court to determine that a new trial is required, that decision would substantially alter further proceedings in this case, potentially nullifying any actions taken by the district court on remand in the interim. Accordingly, the requirements for a stay under Rule 41(d)(1) of the Federal Rules of Appellate Procedure and Circuit Rule 41 are met.

Anderson shows a pattern of actual bias. Judges' decisions conveyed the impression that they "had become an active participant in [crime], rather than remaining as a detached adjudicator". (See EXHIBIT E - Appellant's Informal Brief, page 8 and What are the facts of your case? pages 2-43.) Flagrant and egregious violations of the Code of Judicial Conduct by judges warrant vacatur of the district court's findings of fact and conclusions of law, including all Orders imposed. Such a remedy would be commensurate with the gross ethical violations that occurred in this case, and would more fully restore the public's confidence in the integrity and impartiality of the judiciary. Only by developing a full record will the public be assured that the judiciary has taken all reasonable steps to determine the extent of, in this case, the district and court of appeals judges ethical breaches, and to fashion an appropriate remedy based on all the facts.

Secondly, this court should exercise its supervisory powers over district courts. Ct. R. 10. *See Robert L. Stern et al., Supreme Court Practice* 299 (5th ed. 1979). The circumstances under which judges should be disqualified from hearing cases, and the appropriate remedy for their failing to do so, clearly fall within this Court's supervisory authority. *Cf. Young v. United States ex rel. Vuitton et Fils S.A., 481 U.S. 787, 810 n. 21 (1987)* (the Court's exercise of supervisory authority is "especially appropriate" in an area that "concerns the functioning of the Judiciary"); *id.* ("we have not hesitated to find actual prejudice irrelevant when utilizing supervisory authority.") This reason justifying review is interrelated with the other reasons. For what is at stake in this case is not just the proper interpretation of an important statue, but the proper functioning of the federal Judiciary – one of three branches of our government – and the public's confidence in it.

In *Liljeberg,* the Supreme Court held that a violation of 28 U.S.C. § 455(a), far less egregious than the pattern of misconduct engaged in by the district judge in this case, required that a final judgment (which had been affirmed on appeal) be vacated and the case retried. No requirement of actual bias was imposed. See *Liljeberg, 486 U.S. at 867-68.* The decisions in *United States v. Cooley, 1 F.3d (85 (10 Cir. 1993)* and *Preston v. United States, 923 F. 2d 731 (9th Cir. 1991)* also support Anderson's position that disqualification of Judge Jones as of October 24, 2008 is necessary to remedy the appearance of partiality created by the district judge's Order.

In *Preston,* the Ninth Circuit disqualified a trial judge pursuant to 28 U.S.C. § 455(a) because he previously had been "of counsel" to a law firm that represented a non-party with an interest in the litigation. *Preston, 923 F.2d at 732.* Despite the absence of any claim of actual bias, see *id.* at 734, the Ninth Circuit held that there was "no way . . . to purge the perception of partiality in this case other than to vacate the judgment and remand the case to the district court for retrial by a different judge," *id. at 935.* The Ninth Circuit reached that conclusion despite acknowledging "that a retrial will involve considerable additional expense, perhaps with the same result as the first trial." *Id.*

The imposition of a requirement of actual bias... presents a clear conflict on an important issue with direct bearing on maintaining the integrity of the judicial process.

Resulting in a decision not to vacate district court's findings of fact and conclusions of law... knowing crimes were committed against Anderson almost ensures the public may reasonably question whether corrupt district judge Orders influenced corrupt...Court of Appeal's judgment, Order – not merely his judgments on the issue of remedy, but this Court's judgments generally—poses a "risk of undermining the public's confidence in the judicial process." *Liljeberg, 486 U.S. at 864.* At a minimum, if is this Court's requirement of a showing of actual bias to obtain disqualification under 28 U.S.C. § 455(a) presents a substantial question that merits review by this Court.

"TAKE JUDICIAL NOTICE: Any judge who does not comply with his /her oath to the Constitution wars against our Constitution for the United States of America and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. The United States Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also *In Re Sawyer, 124 U.S. 200 (188); U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohens v. Virginia, 19 U.S. (6 Wheat) 264, 404, 5 L. Ed* 257 (1821). *Cooper v. O'Conner, 99 F2d 433.*" (See Exhibit AA – Appellant's Motion for Reconsideration – pages 18-19.)

Anderson has stated that "The sole issue is whether United States Parole Commission had Article III judicial authority to issue sentence.

Under our constitutional system, the right to impose punishment provided by law is judicial. The limitation is therefore of constitutional dimension, deriving from Article III's grant to the court of power over 'cases and controversies'." (See Exhibit --, page 1).

Neither the District Court nor the Court of Appeals has addressed this most critical issue which is a "substantial" question.

Court knows that honest rulings in this case will have potentially huge financial consequences for the government. Allowing the mandate to go forth when questions pertaining to fundamental integrity of proceedings in the district court and court of appeals have not been finally resolved subjects Anderson to the threat of severe and unnecessary injury. It also subjects both the federal judiciary and Anderson to costly and distracting proceedings that may prove in the end to be of no avail.

Remand in this action will "require significant time and attention". The interests of the parties, the judiciary and the public would best be served by affording Anderson a full opportunity to seek review by this Court before going forward. *Books, 239 F.3d at 829.* Anderson is arguing issues which should be considered liberally, and not held to the same standard as if presented by an attorney even if the cases are off point.

Pro se litigants have a statutory right to self-representation in civil matters and must be ensured of meaningful access to the courts See *Haines v. Kerner, , 520-21 (1972)* (Pro se leadings are held to less stringent standards than those required of attorneys.) See *Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998.*

Order Summary judgment for Anderson and dismiss government's case. Anderson presented evidence, government none, on ground for dismissal for failure to comply with Rule 56. Federal Rules of Civil Procedure states that summary judgment must be granted when there is no genuine issue of material fact that would affect the outcome of the case. Impartiality can be reasonably questioned due to judges omissions and acts in proceedings, and engaging in procedural kidnapping via refusing to rule on the merits of all claims and issues presented by plaintiff, and in the covering up of wrongful exercise of authority under 28 U.S.C. Section 1406 by transferring case to the United States District Court for the Western District of Tennessee, where no events had taken place, in order to conceal repeated and flagrant United States Constitutional violations and federal crimes. Judges of district court and court of appeals knew this illegal transfer of case was based on fictional FBI-created rap sheet [Exhibit G] designed to cover up federal and state agents crimes. "If a district court offers no reasons for its dismissal without leave to amend, as the district court did here, we examine the correctness of that decision by looking at the 'five factors used to assess the propriety of motion for leave to amend: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) futility of amendment; and (5) whether plaintiff has previously amended his complaint... Futility of amendment, the most relevant factor here, frequently means that "it was not factually possible for [plaintiff] to amend the complaint so as to satisfy the standing requirement. *Allen v. City of Beverly Hills, 911 F. 2d 367, 373 (9th Cir. 1990).* 'Dismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." *Chang v. Chen, 80 F. 3d 1293, 1296, 1301 (9th Cir. 1996).*

Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence. Anderson attacks the execution of sentence by United States Parole Commission and only cognizable under 28 U.S.C. Section 2241. (See Exhibit D – Exhibit 1 – page 3-4.) "A federal prisoner who is attacking a parole decision must file a habeas petition under 28 U.S.C. Sec. 2241." *Brown v. United States, 610 F. 2d 672, 677 (9th Cir. 1980).*

CONCLUSION – "Plaintiff's filings are not frivolous. It has been shown that this court has jurisdiction to require Government to respond to Plaintiff's motion. Equitable remedies that the court can provide in habeas cases include an order freeing a plaintiff from penalties resulting from conviction that persists beyond the end of detention.

This Court should be deeply troubled by the allegations raised in the habeas petition and various subsequent filings regarding the level of U.S. Parole Commission and FBI control over plaintiff's arrests, convictions, appeals, and confinement. These facts are alleged in a habeas petition and later statement of fact and affidavits that have all been verified as true and correct by petitioners under penalty of perjury.

This Court cannot simply ignore plaintiff's alleged facts and find that it lacks jurisdiction without any response to these troubling fact by defendants. In *Idema v. Rice...*, respondents invited the Court to seek further information from defendants regarding the facts in the case... Government (defendants) demanded that this matter be tried by motion. And the Court, in concert with defendants, has compelled Anderson to answer Government's motion for summary judgment. Accordingly, the defendants shall respond to plaintiff's factual allegations and show cause why this Court should not grant summary judgment...and grant writ of habeas corpus to Plaintiff." (See Exhibit D, Exhibit 1 – page 64-65).

Subsequently court ordered government to respond according to Rule 56, but government failed to present any evidence in response to Anderson affidavit claim that district court had jurisdiction nor to any other evidence presented.

Purpose of a motion for summary judgment is to head off a full-scale trial by conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. *Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998.*

Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial." (See Exhibit D, Exhibit 1 – page 62).

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading: rather its response must, by affidavits or other documents, set out specific facts showing a genuine issue. If the opposing party does not so respond, summary judgment is appropriate, and should be entered against that party.

Based on the foregoing and attached exhibits, Appellant moves the Court to combine Appeals Court cases 09-16311 and 08-17603, order summary judgment and order maximum relief requested in motions. Government has shown no evidence opposing summary judgment, and judges' failure to address all issues raised in Anderson's appeals indicates bias and that they have waived and conceded all arguments raised by Anderson.

Relief sought can be found in Exhibit D, pages 18 through 20.

DATED: December 9, 2009

Respectfully submitted,

s/ Don Benny Anderson
Don Benny Anderson

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 9th day of December, 2009, I have served this APPELLANT'S MOTION FOR STATE OF THE MANDATE PENDING, Rule 35, En Banc Determination, pursunt to 41 (a); PETITION FOR REHEARING *EN BANC* PURSUANT TO RULE 41(a), along with the following exhibits:

Exhibit AAA – EMERGENCY MOTION UNDER 9TH CIR. R. 27-3
Exhibit AA – APPELLANT'S MOTION TO RECONSIDER
Exhibit A - Order, filed July 29, 2009
Exhibit B - Order Denying and Dismissing Habeas Petition – District Court, Western District of Tennessee
Exhibit C - DON BENNY ANDERSON'S "REPLY TO RESPONSE' TO RESPONDENT – APPELLEE'S RESPONSE TO APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION
Exhibit D - APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION
Exhibit 1 - PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS GOVERNMENT'S MOTION

Exhibit E - APPELLANT'S INFORMAL BRIEF
Exhibit F - MANDATE, filed October 26, 2009
Exhibit G - Convicted Persons Questionnaire – Las Vegas Metropolitan Police

on the following parties to proceeding, by depositing it is an parcel containing the above document properly addressed and with first class postage prepaid.

The name and address of parties served is as follows:

Clerk, U.S. Court of Appeals For The Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

United States Attorney
333 Las Vegas Blvd. S. #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938-1156
217-246-4999

No. 09-16311

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EMERGENCY MOTION UNDER 9TH CIR. R. 27-3

DON BENNY ANDERSON,)
)
Petitioner-Appellant,)
) DC No. 2:08-cv-01256-
v.) RCJ-LRL
) DISTRICT OF NEVADA,
UNITED STATES PAROLE) LAS VEGAS
COMMISSION,)
)
Respondent-Appellee,)
)

EMERGENCY MOTION UNDER 9TH CIR. R. 27-3
CASE NO. 09-16311 FOR JUDGMENT/ORDER

Notice to court! Moving party gives notice APPELLANT'S INFORMAL

BRIEF is unopposed by Respondent-Appellee. (9th Cir. R. 27 (Eff. 01/1999)

DON BENNY ANDERSON
Petitioner-Appellant

DON BENNY ANDERSON
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, IL 61938-1156
217-246-4999

Don Benny Anderson v. United States Parole Commission
No. 09-16311
9th Cir. R. 27-3 Certificate

Movant Don Benny Anderson certifies that, to avoid irreparable harm, relief is needed in less than 21 days, pursuant to Title 18 Section 1621 and Title 28 U.S.C. Section 1746.

Telephone Numbers and Office Addresses Of Attorneys:

Counsel for appellants:
Don Benny Anderson
Tel: (217) 246-4999
Pro Se

Mailing Address:

Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, IL 61938-1156

Counsel for appellee:
Robert L. Ellman
Tel: (702) 388-6546

Robert L. Ellman
Appellate Chief and
Assistant U.S. Attorney
333 Las Vegas Blvd., S.
Suite 5000
Las Vegas, Nevada 89101

When and how counsel for the other parties were notified:

(1) Before filing of this motion, movant has made ever practicable effort to notify the Clerk and opposing counsel, and to serve the motion, at the earliest possible time.

(2) Motion is being filed with the Clerk in San Francisco and the opposing counsel in Las Vegas by telephone on Thursday, September 10, 2009, and by overnight delivery of the documents by priority mail on Thursday, September 10, 2009.

Facts showing the existence and nature of the claimed emergency:

Notice to court! Moving party gives notice APPELLANT'S INFORMAL BRIEF is unopposed by Respondent-Appellee. (9th Cir. R. 27 (Eff. 01/1999)

The following facts, are based on federal and state agents violation the Supreme Law: Constitution for the United States of America, violation of the laws of the land facts found in Exhibit AA - APPELLANT'S MOTION TO RECONSIDER ORDER, Exhibit A – ORDER, filed July 29, 2009-U.S. Court of Appeals, Exhibit B – ORDER DENYING AND DISMISSING HABEAS PETITION, ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH, AND ORDER RESTRICTING FILING PRIVILEGES IN THIS DISTRICT-U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION, Exhibit C –DON BENNY ANDERSON'S "REPLY TO RESPONDENT" TO RESPONDENT – Filed June 9, 2009, Exhibit D – APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION includes EXHIBIT 1 – ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS (Note: Respondent is correctly identified as United States Parole Commission), and Exhibit E – APPELLANT'S INFORMAL BRIEF show the existence and nature of the claimed emergency.

1. Fact - Since the Respondent-Appellee has not refuted any claims or issues, writ of habeas corpus should be granted immediately.
2. Fact – Anderson's ORIGINAL MOTION FOR SUMMARY JUDGEMENT AND TO DISMISS (Note: Respondent is correctly identified as United States Parole Commission), (See Exhibit D, Exhibit 1, page 1);

3. Fact - PETITIONER-PLAINTIFF'S REBUTTAL TO GOVERNMENT'S DELIBERATELY COMBINED MOTION TO DISMISS NOS. 2:08-cv-01256-JCM-LRL, 2:08-cv-01486-RCJ-PAL, 2:08-cv-01501-KJD-GWF, 2:08-cv-01514-JCM-GWF PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA AND PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS WAS TIMELY SENT- CLERK RETURNED IT STATING "YOU MUST HAVE AN ORIGINAL MOTION FOR EACH CASE YOU HAVE." (See Exhibit D, Exhibit 1, page 1);
4. Fact - the clerk of the court instructed Anderson to amend his motion. (See Exhibit D, Exhibit 1, page 1);
5. Fact - Anderson, in compliance with the clerk's directive, filed ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL. (See Exhibit D, Exhibit 1, page 1);
6. Fact – A party may amend its pleading once within 20 days after a responsive pleading has been served, or if that period has passed, then by leave of the court or by consent of the other party. Fed R. Civ. P. 15(a). Courts may freely grant leave when justice so requires, and public policy strongly encourages courts to permit amendments. Fed. R. Civ. P. 15(a); Outdoor Sys., Inc. v. City of Mesa, 997 F.2d 604, 614 (9th Cir. 1993). The policy of allowing amendments "is to be applied with extreme liberality." Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 712 (9th Cir. 2001). (See Waldrip v. Hall);
7. Court's Clerk granted Anderson leave to amend. (See number #3 above.)
8. Fact – Anderson filed PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND MOTION TO

DISMISS GOVERNMENT'S MOTION. (See Exhibit D, Exhibit 1,
page 1);

9. Fact – Anderson in Affidavit at page 2 (#6) "Affiant/Plaintiff is serving a United States Parole Commission sentence;" page 3 (#7) "Therefore, Respondent is the United States Parole Commission ;" (See Exhibit D, Exhibit 1, pages 2 and 3);
10. Fact - Gregory A. Brower, United States Attorney and Robert L. Ellman, Appellate Chief and Assistant U.S. Attorney, Counsel for Appellee, - fraudulently claim that the Respondent is the Federal Bureau of Investigation and fatal to jurisdiction of district court. This issue must be resolved immediately so that Anderson can obtain relief. (See Exhibit D, Exhibit 1, pages 60 - 63) and see the following:

"I. Petitioner's decision to treat the FBI as his "warden" by naming the FBI as respondent is also fatal to jurisdiction." (See page 3 of Government's motion).

> Response made by Affidavit: "Anderson never claimed to be in the custody of the FBI. Since Anderson claimed that he was in custody and filed a PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. 2241 by a person in custody, Government should have looked to the facts of the case to determine who the Respondent would truly be. Ground 1 in Petitioner's PETITION FOR A WRIT OF HABEAS CORPUS clearly reveals that U.S. Parole Commission would be the Respondent because they claim they have jurisdiction over Anderson and as result he had to report to Las Vegas Metropolitan Police and make reports to Parole Officer. Respondent argues that he is in the actual custody and

control of the U.S. Parole Commission. There exists a genuine issue necessary to be litigated because of the fraudulent claim above.

J. "Because the petitioner in Padilla filed his petition in a different district that of his actual "warden," the Court held that the district court lacked jurisdiction to hear it. *Id.*" (See page 3 of Government's motion).

Response made by Affidavit: "Anderson does not claim to be confined with a warden. Anderson relies on *Idema v. Rice, 478 f.Supp.2d 47 (D.D.C 2007)* This Court has jurisdiction to hear this Writ. The issue is relevant and there exists a genuine issue necessary to be litigated.

K. Further, Similarly Frivolous Petitions Should Be Prohibited See page 3 of Government's motion): "As demonstrated above, plain defects in jurisdiction and venue make clear that no post-conviction relief petition filed by Petitioner is this district can ever progress to an adjudication on the merits." (See page 3 of Government's motion).

Response made by Affidavit: "At the time original writ of habeas corpus was filed in this court, Don Benny Anderson was residing with Kay Dahlgren at 8724 Litchfield Ave., Las Vegas, NV 89134, with intentions of establishing a permanent residence there and opening a business. This court had jurisdiction because the Convicted Persons Questionnaire (See Exhibit C), was presented for signature when registering with Las Vegas Metropolitan Police, since he was on parole, and because the court had not yet ruled on Case 2:08-cv-01239-RCL-LRL. Petitioner would still be residing in Las Vegas if he had not been forced to return to

Illinois, and plans to live in Nevada with Ms. Dahlgren and establish a gun sales business, as plainly stated in all petitions. Anderson requested an immediately decision in order to remain in Nevada so that he would not be compelled to return to Illinois.

Because Affiant, who is currently serving a sentence that was enhanced on the basis of a prior conviction is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;

Affiant can collaterally attack the validity of a previous conviction used to enhance United States Parole Commission sentence obtained in violation of right to self-representation or right to counsel;

Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

Purpose of a motion for summary judgment is to head off a full-scale trial conducting a trial in miniature, on affidavits, so that not submitting affidavits is the equivalent of not presenting any evidence at trial. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998;

Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;

Plaintiff disagrees with this statement. There exists a genuine issue necessary to be litigated. (See Exhibit D, Exhibit 1, pages 60 - 63);

11. Fact - Affiiant respectfully moved the court to dismiss Government's motions and for summary judgment in all of his following cases mentioned herein in his favor. (See Exhibit D, Exhibit 1, page 2);
12. Fact - Affiant seeking summary judgment bears the initial responsibility of informing the Court of the basis of his motion, and identifying those portions of pleadings on file, together with the affidavits, which Plaintiff has done herein within Affidavit that he believes demonstrates the "absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 325 (1986) (quoting Fed. R. Civ. P. 56 (c)) (See Exhibit D, Exhibit 1, page 5);
13. Fact - Respondent is being informed of its right to file counter-affidavits or other responsive evidentiary materials and failure to do so might result in summary judgment against respondent; (Exhibit D, Exhibit 1, page 5);
14. Fact - If the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.' (Exhibit D, Exhibit 1, page 5);
15. Fact - A party opposing a motion for summary judgment shall file a concise statement, and the source thereof in the record, of all material facts as to which there is a genuine issue precluding summary judgment (Exhibit D, Exhibit 1, page 5);
16. Fact - Respondent has failed to file an appropriate answer or motion together with transcripts of all federal and state court proceedings, including federal and state prosecutors records and prosecutors notes, grand jury transcripts, appeal records and transcripts and totality of federal and state court records and investigative reports (Exhibit D, Exhibit 1, page 3);

17. Fact - Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the facts. See Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998 (Exhibit D, Exhibit 1, page 5);
18. Fact - Purpose of a motion for summary judgment is to head off a full-scale trial by
    conducting a trial in miniature, on affidavits, so that not submitting affidavits is
    the equivalent of not presenting any evidence at trial. See Rand v Rowland, U.S.
    Court of Appeals for the 9th Cir. – August 27, 1998 (Exhibit D, Exhibit 1, page 5);
19. Fact - Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial (Exhibit D, Exhibit 1, page 6);
20. Fact - Don Benny Anderson is constitutionally, statutorily, legally, factually and actually innocent of all federal and state charges as alleged in the charging instruments (Exhibit D, Exhibit 1, page 49, #37);
21. Fact – No Federal or state prosecutor can give Anderson full discovery of all federal and state records because nationwide conspirators will not expose a national conspiracy to frame him on bogus offenses (Exhibit D, Exhibit 1, page 48, #29);
22. Fact – No evidentiary hearing can be held with any prosecutor presenting proof beyond a reasonable doubt every fact that constitutes the offense charged (Exhibit D, Exhibit 1, page 48. #30);
23. Fact – Anderson was convicted for non-offenses and illegally sentenced and imprisoned. (Exhibit D, Exhibit 1, page 48. #31);
24. Fact - Petitioner wanted to stay in Nevada and open a business but was forced to return to Illinois. He wishes

to return to Nevada immediately to continue with his plans for establishing a business.

25. Fact - In this case one of the issues is whether United States Parole Commission had Article III judicial authority to issue sentence. This question must be answered immediately by this court before Anderson's liberty can be restored.
26. Fact - In DC No. 2:08-cv-01256-JCM-LRL, petitioner was required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008. While Anderson remains on parole, he is unable to establish his business in Nevada;
27. Fact - petitioner's travel is restricted and he was required to return to Illinois after a week. Anderson wishes to establish a permanent residence in Nevada and cannot do so due to travel restrictions.
28. Fact - petitioner is unable to establish a residence and gun sales business in Nevada. This cannot be accomplished unless this court immediately grants relief requested;
29. Fact - petitioner is required to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly. The 13th Amendment requires that there will be no involuntary servitude unless duly convicted;
30. Fact - petitioner cannot possess firearms. As a result, Anderson is being denied his Second Amendment right to bear arms or to open his gun sales business;
31. Fact - petitioner cannot have any contact with other convicted felons and must report same, should it occur. Anderson also wishes to run for Public Office immediately and is unable to do so as long as convictions remain on his record. These are denials of Anderson's First Amendment right of association,

freedom of speech, freedom of assembly, and freedom of religion.

32. Fact - Anderson may suffer another possible false arrest, conviction and sentence in the future on fictional charges as in this case at bar which has been used against him by kidnapping conspirators in United States District Courts, United States Courts of Appeals and United States Parole Commission;

33. Fact - Anderson has already suffered consequences in that Government has created false convictions in absentia while he was already incarcerated;

34. Fact - Anderson was coerced by Bureau of Prisons and the U.S. Parole Commission to sign parole papers;

35. Fact - Anderson is not legally on federal parole since only a lawful Article III court with judicial authority can issue sentence;

36. Fact - Under our constitutional system, the right to impose punishment provided by law is judicial;

37. Fact - No court ever ordered probation or other conditions nor delegated that authority.

38. Fact - Under the United States Constitution, only a sentencing court having lawful Article III's judicial authority; having been invested under the Constitution with power over "cases and controversies" can impose sentence. Bureau of Prisons or United States Parole Commission agents have no authority to sentence an offender to parole;

39. Fact - One, the original Constitution was entirely a statement of government's duties;

40. Fact - Two, A "Constitutional Guarantee" implies a governmental duty – even if the duty is otherwise unspecified in the Constitution;

41. Fact - Three, Government is mandated to perform its clearly-mandated duties;

42. Fact - Four, There is no constitutional power which allows government to waive its duties;

43. Fact - Five, Constitutional duties cannot be waived because they are not principally obligations of individual defendants or citizens;
44. Fact - Six, Government agents' obligation is to government's true boss: WE THE PEOPLE, ALL THREE HUNDRED MISSION OF US;
45. Fact - Seven, The only way government can "waive" a constitutional duty owed to 300 million Americans is by persuading two-thirds of Congress and three-quarters of the fifty States to agree to lawfully amend the Constitution to revoke or modify that duty. See United States Constitution Article V;
46. Fact - Eight, As a matter of fact, the waiver of a constitutionally-mandated governmental duty constitutes an amendment to the Constitution and cannot be lawfully implemented by any mere individual defendant, prosecutor or judge or any combination of them according to the Supreme Law: Constitution for the United States of America;
47. Fact - The Government provided no affidavits and authorities in its so-called Government's Response in Opposition to Motion For Summary Judgment, sent to the Affiant on December 23, 2008;
48. Fact - Writ of habeas corpus may be granted where Affiant is in custody in violation of the Constitution or laws or treaties of the United States. Title 28 U.S.C. Section 2241(c) (3);
49. Fact - Anderson's petition seeking habeas corpus relief is appropriate under 28 U.S.C. Section 2241 because he is challenging the fact or duration of his confinement/custody or restraint;
50. Fact - Title 28 U.S.C. Section 2241 is appropriately being used to challenge circumstances of confinement/custody or restriction to Central District of Illinois and restraint of liberty;

51. Fact - Respondent has failed to file an appropriate answer or motion together with transcripts of all federal and state court proceedings, including federal and state prosecutors records and prosecutors notes, grand jury transcripts, appeal records and transcripts, and totality of federal and state court records and agents notes and agencies records and investigate reports (See EXHIBIT 1);
52. Fact - Respondent has failed to make a return certifying the true cause of detention as mandated by Title 28 Section 2243.
53. Fact - Because Anderson, who is currently serving a parole sentence that was enhanced on the basis of a prior conviction, is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;
54. Fact – Anderson can collaterally attack the validity of a previous conviction used to enhance United States Parole Commission sentence obtained in violation of the right to self-representation or right to counsel;
55. Fact - Anderson is entitled to collateral review of final judgments of federal and state courts because he has made a showing of actual harm that he seeks to avoid resulting from those judgments. *Lane v. Williams, 455 U.S. 624 (1982).*
56. Anderson is being affected and has a reasonable expectation that he will again be affected by judgments and sentences imposed in the complete absence of all jurisdiction;
57. Fact - All federal and state counsels failed to prevent continuing collateral consequences and concrete and continuing injury from conviction, with above civil disabilities imposed by operation of law-imposed by federal or state law;

58. Fact - Anderson was informed about other trials and convictions when required to register with Las Vegas Metropolitan Police on Sept. 18, 2008;
59. Fact - New conviction created in FBI rap sheet in Memphis, TN in 1987, creating a trial in absentia, while Anderson was in prison for fictional federal crimes, offense: Explosive Property Destruction, sentence 42 years; [The 42-year sentence in this trial equals the 12-year sentence imposed in Virginia, and the 30-year sentence in Alton, IL, both following Anderson's arrests in 1982 and with no proof of jurisdiction in either... Coincidence or conspiracy? Also the 17-year parole until 2024, following 25 years served equals the same 42 years total.]
60. Fact - *Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed.646 (1872)* "Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction."
61. Fact - *Basso v. UPL, 495 F. 2d 906; Brook v. Yawkey, 415 U.S. 528; Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)* Under federal Law, which is applicable to all states, the U.S. Supreme Court stated that 'if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers."
62. Fact - Gregory A. Brower, United States Attorney and Robert L. Ellman, Appellate Chief and Assistant U.S. Attorney, Counsel for Appellee, have failed to address issues raised by Affiant in APPELLANT'S INFORMAL BRIEF, Case No. 08-17603 and Case No. 09-16311;
63. Fact - In ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS No. 2:08-cv-01256-

JCM-LRL, Don Benny Anderson shows that he is factually and actually innocent of all Federal and State crimes;

64. Fact - The U.S. Parole Commission acted in complete absence of all jurisdiction in sentencing Anderson;
65. Fact - District Court abused power by not ruling on issues and not granting relief;
66. Fact - Judicial bias by Court has denied Don Benny Anderson benefits, privileges and rights guaranteed by law;
67. Fact - Abuse of Power - U.S. Parole Commission agents and other government agents have illegally and unconstitutionally made petitioner subject to their fictional jurisdiction;
68. Fact - In ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS, No. 2:08-cv-01256-JCM-LRL, Parole Commission conceded that they knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence, since they did not challenge any issues raised point by point.
69. Fact - Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence;
70. Fact - Anderson had an absolute right to be represented by counsel in all federal and state cases from conviction on appeal;
71. Fact - The Sixth Amendment right to the effective assistance of trial counsel has been extended to guarantee the effective assistance of counsel on the appeal by right;
72. Fact - Anderson was denied effective assistance of counsel in all federal and state case and including appeal (See EXHIBIT D, EXHIBIT 1);

73. Fact - Anderson was IN WANT OF EFFECTIVE ASSISTANCE OF COUNSEL AT ALL TRIALS AND ON APPEAL, in violation of his Sixth Amendment rights;
74. Fact - Anderson never knowingly, willingly and intelligently waived his constitutional rights;
75. Fact - Anderson is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby, In., , 251-52 (1986);*
76. Fact - Anderson seeking summary judgment bears the initial responsibility of informing the Court of the basis of his motion, and identifying those portions of pleadings on file, together with the affidavits, which Anderson has done in Affidavits that he believes demonstrates the "absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 325 (1986) (quoting Fed. R. Civ. P. 56 (c)) (See EXHIBIT 1);
77. Fact – Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;
78. Fact – Pro se litigants have a statutory right to self-representation in civil matters and must be ensured of meaningful access to the courts; consequently, we tolerate informalities from civil pro se litigants. See Haines v. Kerner, ,520-21 (1972) (Pro se pleadings are held to less stringent standards than those prepared by attorneys.) See Rand v. Rowland, U.S. Court of Appeals for the 9th Circ. – August 27, 1998;
79. Fact – Courts have a general duty "to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements" and "develop other procedural protections for pro se litigants". See Rand

v. Rowland, U.S. Court of Appeals for the 9th Circ. – August 27, 1998;

80. Fact – With criminal intent, Court and United States Attorney conspirators have designed ways for this pro se litigant and others to lose meritorious cases at every stage of Court's proceedings including requiring special paperwork "procedural booby traps".

81. Fact – Due to paperwork that Court required Affiant/Petitioner/Plaintiff to use, Government was able to issue boilerplated motions with irrelevant misleading claims allowing Courts to rule that the Court had no jurisdiction.

82. Fact – Respondent, party opposing a motion for judgment, failed to file a concise statement, and the source thereof in the record, of all material facts as to which there is a genuine issue precluding judgment.

> In *Moore v. Czerniak, Court of Appeals No. 04-15713 (2009)*, petitions for rehearing and rehearing en banc, it was observed that a federal appellate court "lacks the factfinding and record-developing capabilities of a federal district court". They simply decline to base decisions on arguments and theories that the state has never offered, and which it has therefore forfeited. In Moore, it was stated that "It would work great prejudice to the petitioner were we to affirm the denial of his habeas petition on the basis of such speculative arguments and assertions offered for the first time by a member of this court—arguments and assertions to which Moore has had no occasion, opportunity, or reason to respond. Without any indication from the state as to what evidence it may have possessed and why that evidence may have rendered counsel's failure to suppress..., it is simply impossible for a petitioner to respond to the states 'evidence' or 'arguments'."

"Not only did the state forfeit any such contentions by not raising them on appeal, but it first forfeited these theories in federal court by failing to raise them in the district court." *See Singleton v. Wulff, 428 U.S. 106, 120 (1976)*

"The decision to consider an issue not raised below is discretionary, and such an issue should not be decided if it would prejudice the other party." The Supreme Court has explained that this forfeiture rule "is essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues which the trial tribunal is alone competent to decide" and that "it is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." *Hormel v. Helvering, 312 U.S. 552, 556 (1941).*

Continuing in their opinion re: Moore, the court cited In *Stuard v. Stewart, 401 F. 3d 1064 (9th Cir. 2005)*, "we squarely rejected the notion that this court could create arguments for the state that it did not raise on appeal." They also held that "we are not going to construct an argument for the state sua sponte, depriving [the defendant's] counsel of a fair chance to respond to it". "We apply that rule with some vigor against criminal defendants; we should be no less vigorous in applying it against the government." United *States v. Ziegler, 497 F.3d 890, 901 (9th Cir. 2007)*

83. Fact – Respondent has conceded, waived response, thereby admitting all Affidavit/ Declarations are correct and stand for Truth and Fact.: Fact – Anderson is victim of political kidnappings and was kidnapped in violation of Title 18 Section 1201; Fact – Anderson is a victim of domestic terrorism in violation

of Title 18 Section 2331; Fact – Anderson was/is in forced labor in violation of Title 18 Section 1589; Fact – Anderson was/is in involuntary servitude in violation of Title 18 Section 1584; Fact – Anderson was/is a victim in respect of peonage, slavery involuntary servitude, of forced labor in violation of Title 18 Section 1590; Fact – Anderson is a victim of a conspiracy against rights in violation of Title 18 Section 241; Fact – Anderson is a victim of deprivation of rights under color of law in violation of Title 18 Section 242.

84. Fact – Anderson has charged and proved through matter-of-fact evidence and affidavits presented that he has been a victim of systematically established, secret, cruel, abusive and unlawful practice of federal and state organized crime and that lawyers have fostered the unlawful and aggressive criminal practices.

85. Fact – Anderson's judgments, convictions, sentences, custody or restraint are in violation of
the Supreme Law: Constitution for the United States of America:

Constitution for the United States of America - Preamble

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I - Section 9 - Limits on Congress - The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Article III, Section 2, Clause 3 - The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed.

Article V - The Congress whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress...

First Amendment – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Second Amendment –Being necessary to the security of a free State, the right of the People to keep and bear Arms, shall not be infringed.

Fourth Amendment – The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment –No person shall be held to answer for any capital, or otherwise infamous crime, unless on a presentment or indictment of a

Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment -In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

Eighth Amendment - Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Ninth Amendment - The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Tenth Amendment - The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Thirteenth Amendment - Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Fourteenth Amendment - Citizen rights not to be abridged - All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws.

RELIEF SOUGHT:

Anderson has proven that he has been victimized by organized predominantly criminal enterprise, and is entitled to receive compensation as the result of a sustained pattern of unlawful activities, fraud, breach of fiduciary duties, breach of assumed duties, inflictions of emotional distress, invasion of privacy and criminal conspiracies which arise from the unconscionable conduct of bar association members and fellow conspirators to cover up illegal and unconstitutional practices. The crimes mentioned are so outrageously offensive that they amount to predatory premeditated criminal acts, violations of due process, and violations of constitutional rights. (See Fifth Amendment – Just compensation; Title 28 Section 2243 "as law and justice require).

The Supreme Court has instructed and reviewing court is required to undertake a "searching and careful" review of the facts. Anderson respectfully submits that the "searching and careful" review that the Supreme Court requires has never been performed in this case. The Court is urged to examine the facts of the case with a careful and critical eye, including the statements and affidavits of Anderson. Such a review will show that government's position is completely unsupported by the evidence presented. (See Exhibit AA, page 14).

Wherefore, Anderson prays this court, based on foregoing and following, to grant relief. Relief sought in this motion was available in the district court, and grounds advanced in this court were submitted, but the district court has failed to provide the requested relief.

JUDICIAL NOTICE: Therefore, this court should sua sponte, on its own motion, not remand or deny this motion, but use its supervisory power to address all issues herein and in attached exhibits, even if not raised in district court. "Guided by considerations of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Simpson, 927 F. 2d 1088, 1090 (9th Cir. 1991).*

Above facts, exhibits show the existence and nature of the claimed emergency.

Respectfully Submitted,

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938-1156
217 246-4999

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 10th day of September, 2009, I have served this **EMERGENCY MOTION UNDER 9TH CIR. R. 27-3, along with the following Exhibits,**

Exhibit AA – APPELLANT'S MOTION TO RECONSIDER ORDER
Exhibit A - ORDER, filed July 29, 2009 – U.S. Court of Appeals
Exhibit B - ORDER DENYING AND DISMISSING HABEAS PETITION, ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH, AND ORDER RESTRICTING FILING PRIVILEGES IN THIS DISTRICT – U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION
Exhibit C - DON BENNY ANDERSON'S "REPLY TO RESPONSE' TO RESPONDENT – Filed June 9, 2009
Exhibit D - APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION - includes EXHIBIT 1 – ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS (Note: Respondent is correctly identified as United States Parole Commission)
Exhibit E - APPELLANT'S INFORMAL BRIEF

on the following parties to proceeding, by depositing it is an envelope containing the above document in the United States mail properly addressed with priority overnight postage prepaid.

The name and address of parties served is as follows:

Clerk, U.S. Court of Appeals For The Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

United States Attorney
333 Las Vegas Blvd. S. #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938-1156
217-246-4999

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DON BENNY ANDERSON,)
)
Petitioner-Appellant,)
) DC No. 2:08-cv-01256-
v.) RCJ-LRL
) DISTRICT OF NEVADA,
UNITED STATES PAROLE) LAS VEGAS
COMMISSION)
)
Respondent-Appellee)

APPELLANT'S MOTION TO RECONSIDER ORDER

In accordance with Circuit Rule 27-10, petitioner-appellant submits this Motion to Reconsider Order in response to court's order, filed July 29, 2009.

In an attempt to not rule on issues presented and further procedural kidnapping, court has mislabeled the Respondent's identity as Federal Bureau of Investigation on its Order, in spite of the fact that APPELLANT'S INFORMAL BRIEF identified UNITED STATES PAROLE COMMISSION Appellee and Petitioner had amended this error as explained in Appellant's Informal Brief, page 8: "6) Affiant/Plaintiff is serving a United States Parole Commission sentience; 7) Therefore, Respondent is the United States Parole Commission:"

'ORDER Before: CANBY, THOMAS, and IKUTA, Circuit Judges.

A review of the record demonstrates that this court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable See

Nascimento v. Dummer, 508 F. 3rd 905, 908 (9th Cir. 2007) (transfer orders are not directly appealable). COnsequetly, this appeal is dismissed for lack of jurisdiction"

STATEMENT OF REASONS SUPPORTED BY PERTINENT AUTHORITY TITLE 18 SECTION 1621 UNSWORN DECLARATIONS OF EVIDENCE OF DON BENNY ANDERSON; UNSWORN AFFIDAVIT/ DECLARATIONS OF DON BENNY ANDERSON UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 SECTION 1746

1. My name is DON BENNY ANDERSON. I am sixty-eight (68) years of age, having been born on December 19, 1940 in Springfield, Illinois;
2. I am of sound mind and fully competent to make this Affidavit/Declarations under the penalty of perjury;
3. This Affidavit/Declarations must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;
4. This Affidavit/Declarations will stand for Truth and Fact before United States Court of Appeals for the Ninth Circuit in this MOTION TO RECONSIDER ORDER;
5. This Affidavit/Declarations is made on personal knowledge and sets forth facts that are admissible evidence;
6. Appellant requested this Court to consolidate the following co-mingled cases: 1) DC No. 08-cv-01239-RCJ-LRL, IN THE FURTHERANCE OF JUSTICE ORDER WRIT OF HABEAS CORPUS BE GRANTED NOW, DISTRICT OF NEVADA, LAS VEGAS and 2) DC ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS NO.

2:08-cv-01256-JCM-LRL, and to exercise supervisory power and rule on both motions;

7. Title 18 Section 4 – Misprison of felony:
   Whoever, having knowledge of actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make know the same to some judge...shall be fines...or imprisoned....
8. Anderson has presented irrefutable evidence that crimes against him had been committed.
9. Canby, Thomas, and Ikuta, Circuit Judges, as well as District Judges, James C. Mahan and Thomas Anderson, have abused their discretion by failing to consider the factors relevant to eligibility for relief, failed to consider evidence in an impartial manner, and issued order which furthered crime against Anderson;
10. Appellant believes that these are extremely substantial issues which do require further argument, because they reveal that laws of the land have been violated;
11. United States Constitution, First Amenment: "Congress shall make no law...abridging...the right of the people...to petition the government for Redress of Grievances." This right was violated by all the judges and courts by not addressing Anderson's claims and issues;
12. It is evident that this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a Court's supervisory power: (1) to implement a remedy for violation or recognize3d rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter further illegal conduct. United States v. Hasting, 461 U.S. 499, 505 (1983);

United States v. Simpson, 927 F.2d 1088, 1090 (9th Cir. 1991. All three of these bases apply to Anderson's case.

13. MOTIONS ARE NOT MOOT AND COURT OF APPEALS HAS JURISDICTION AND RELIEF CAN BE GRANTED.

FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 7th day of August 2009.

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P.O. Box 1156
Mattoon, Illinois 61938-1156
217 246-4999

"The FBI fraudulently manufactured a conviction in Memphis, TN for Explosive Property Destruction in 1987 with a sentence of 42 years, while Appellant was incarcerated since 1982. ***It is Anderson's contention that there was no actual trial in absentia, but the conviction was a "paper creation" created by Federal Bureau of Investigation.*** At the time of the alleged trial, Anderson was in prison and was not aware of this conviction until he was informed of it when required to register with Las Vegas Metropolitan Police during his visit to Nevada on September 18, 2008. Assistant U.S. Attorney, Robert L. Ellman and U.S. Attorney Gregory A. Brower, conspired with U.S. District Judge, James C. Mahan who, knowing that no true physical trial took place, engaged in procedural kidnapping by not addressing claims and issues and by instead transferring this case to the United

States District Court for the Western District of Tennessee in violation of the United States Constitution, First Amendment, "Congress shall make no law...right of the people...to petition the government for Redress of Grievances".

The court transferred this petition to Tennessee during "pendency of motion", and failed to provide Appellant with copy of the order. Courts have no authority to "terminate" appealable and make them un-appealable motions simply by refusing to adjudicate them and calling them "moot". A party asserting that an issue is moot must demonstrate that there is no reasonable expectation that the violation will recur". See *County of Los Angeles v. Davis, 440 U.S. 625, 630 Case No. 09-16311 (1979):* accord *In re Campbell, 628 F. 2nd 1260, 1261 (9th Cir. 1980).*

The transfer in this petition was a criminal act in furtherance of the crimes mention in Appellant's Informal Brief. Judge Thomas Anderson, District Court in Tennessee, joined the conspiracies mentioned when he entered an ORDER DENYING AND DISMISSING HABEAS PETITION to cover up the kidnapping of Anderson and to further his kidnapping.

CANBY, THOMAS and IKUTA, Circuit Judges, have the burden of providing a copy of the probable cause statement, docket sheet, indictment, court transcripts, and a pre-sentence report showing that a trial actually took place. Failure to provide these documents will prove that Anderson's allegations of a governmental conspiracy are true.

ANSWERS TO COURT'S OBJECTIONS TO APPELLATE JURISDICTION

District court has been divested of jurisdiction by Anderson appeal. Anderson's case is immediately appealable under the COLLATERAL ORDER

DOCTRINE - The collateral order doctrine is a 'practical construction' of the final judgment rule of 28 U.S.C. section 1291. ***Digital Equipment Corp. v. Desktop Direct, Inc., 114 S.Ct. 1992, 1995 (1994).*** **The doctrine allows appeals from 'a small class [of orders] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.'** ***Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546 (1949).***

The Supreme Court of the United States delineated the test for the availability of interlocutory appeals, called the collateral order doctrine, for United States federal courts in the case of *Lauro Lines s.r.l. v. Chasser et al., 490 U.S. 495 (1989)*, holding that under the relevant statute (28 U.S.C. § 1291) such an appeal would be permitted only if:

1. the outcome of the case would be conclusively determined by the issue;
2. the matter appealed was collateral to the merits; and,
3. the matter was effectively unreviewable if immediate appeal were not allowed.

Because the district court has transferred this petition to Tennessee, even though they knew that no trial had ever taken place in that District, this matter has been made effectively unreviewable in this Circuit. It is then imperative that CANBY, THOMAS and IKUTA, Circuit Judges, act to prevent imposition of further irreparable harm to Anderson and to provide due process which can be achieved by granting relief.

Anderson has proved collateral order doctrine proof and evidence and provided grounds for an appeal under 28 U.S.C. Section 1291, in APPELLANT'S INFORMAL BRIEF

If an improper appeal was taken, the district court retains its jurisdiction to act on the case, but there is no improper appeal in case at bar.

CANBY, THOMAS and IKUTA, Circuit Judges, joining RICO, criminal conspiracy and procedural kidnapping, knew from APPELLANT'S INFORMAL BRIEF that U.S. Attorney Gregory A. Brower, Chief Appellant and Assistant U.S. Attorney, Robert L. Ellman and U.S. District Judge, James C. Mahan, were acting in a criminal conspiracy by allowing both district court and this court of appeals itself to be made an accomplice in willful disobedience of law, aiding and abetting organized crime, in violation of RICO laws. They knew district court had no authority to "terminate" appealable petition and make it un-appealable by committing criminal acts against Anderson, a victim of political kidnapping, who was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; victim of a conspiracy against rights in violation of Title 18 Section 241. Anderson is also a victim of deprivation of rights under color of law in violation of Title 18 Section 242 since court transferred petition for writ of habeas corpus to Tennessee, knowing the Federal Bureau of Investigation had created a fictional crime of Explosive Property Destruction in 1987, with a sentence of 42 years, appearing in Anderson's FBI rap sheet. (See Exhibit G). This was done with the full knowledge that Anderson had been incarcerated since 1982, that no actual trial took place in absentia although a fictional sentence of 42 years was created, and that the United States District Court for the Western District of Tennessee, Judge Thomas Anderson engaged in procedural kidnapping to cover up that fact. This Court of Appeals is covering up facts presented in APPELLANT'S INFORMAL BRIEF by issuing this court's ORDER, which constitutes an overt act of procedural kidnapping in violation of the Title 18 U.S.C. Section 1201.

It is self-evident, from court's ORDER, that the court is biased and prejudiced against Appellant and has knowingly and willingly with criminal intent combined, conspired, agreed and did act in favor of criminals in the government and court only seeing its own arguments, but refused to consider or the points raised in APPELLANT'S INFORMAL BRIEF and in his Legal Argument. As Anderson clearly explained in Anderson's Legal Arguments beginning on page 39 of Appellant's Informal Brief, this court has jurisdiction. See the following:

"ANDERSON'S LEGAL ARGUMENTS

In the ORDER, dated April 28, 2009, Court stated "Before the court is petitioner's motion for summary judgment (docket #12). This motion shall be denied as moot, as this court transferred the petition for writ of habeas corpus to the United States District Court for the Western District of Tennessee on November 19, 2008. IT IS THEREFORE ORDERED that the motion for summary judgment (docket #12) is DENIED as moot, as this matter has been transferred to the United States District Court for the Western District of Tennessee."

"The FBI fraudulently manufactured a conviction in Memphis, TN... in 1987 with a sentence of 42 years while Appellant was incarcerated since 1982. There was no actual trial... conviction was a "paper creation" created by Federal Bureau of Investigation. U.S. District Judge, James C. Mahan, Appellate Chief and Assistant U.S. Attorney, Robert L. Ellman, and United States Attorney Gregory A. Brower...have transferred this case to...Tennessee."

Court transferred this petition to Tennessee during "pendency of motion", and failed to provide Appellant with copy of the order. Courts have no authority to "terminate" appealable and make them unappealable motions simply by refusing to adjudicate them and calling them "moot". "A party asserting that an issue is moot must demonstrate that there is no reasonable expectation that the violation will recur". See *County of Los Angeles v. Davis, 440 U.S. 625, 630 Case. No. 09-16311 (1979): accord in re Campbell, 628 F. 2nd 1260, 1261 (9th Cir. 1980).*

Anderson's motions cannot be moot because the court had jurisdiction and could have provided a remedy. Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the fact. See *Rand v. Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998.*

To grant a motion for summary judgment, a court must determine that there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, (1986).* In considering a motion for summary judgment, the court is required to view the facts and draw reasonable inferences in a light most favorable to the nonmoving party. Id. at 255. At the summary judgment stage the Judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson, supra at 249.*

Plaintiff has shown that this court has venue and jurisdiction. Equitable remedies that the court can provide in habeas cases include an order freeing Plaintiff from penalties resulting from fictional convictions, sentences, and judgments that persist beyond the end of detention, appropriate compensation, and expungment of all State and Federal records to be turned over to Plaintiff, least Don Benny Anderson, Plaintiff, suffer further irreparable injury.

Since all Courts have acted in complete absence of jurisdiction to create a lawful conviction of sentence, Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies "as law and justice require" order compensation or relief as this court would deem just and proper. See case of Ervin McGee, Jr. vs. City of Tulsa (2007) where $14.5 million awarded for wrongful conviction and imprisonment.

Collateral review of all federal and state judgments are necessary because Plaintiff has made a showing he has suffered from actual harm from them. Plaintiff has reasonable expectation that he will have to register again in Nevada until all cases are resolved, and fraudulently alleged crimes and/or fictionally created crimes removed from his rap sheet and all federal and state records, and he will have to register in Florida as well as in other states. Business, travel privileges and liberties are restricted.

In the Government's Response In Opposition To Motion For Summary Judgment, dated December 23, 2008, the Government makes mention of the Petitioner's 58-page motion for summary judgment. The Petitioner's motion actually included 67 pages. By overlooking the final 9 pages of the motion, the Respondent disregarded the allegations contained therein.

The Government provided no affidavits and no authorities in its so-called Government's Response In opposition to Motion For Summary Judgment, as required of the non-moving party in opposition to that motion for summary judgment. Local Rule 7-2(b). Thus the court should grant Plaintiff's motion and dismiss the non-moving party's motion and claims.

What is relevant to this Informal Brief is the fact that the record of this case contains not one affidavit by government or a piece of paper from appellees that would qualify as evidence under the Rules of Civil Procedure. Although the record includes numerous fraudulent governmental statements, there is nothing, beyond the conspiracy of the U.S. Attorney Gregory A. Brower, Chief Appellate and Assistant U.S. Attorney, Robert L. Ellman and the corruption of the "fact-finder" U.S. District Judge, James C. Mahan, in denying Appellant's motion as "moot" and transferring the petition for writ of habeas corpus to Tennessee.

The inability of a federal court to "review moot cases derives from the requirement of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy." *Liner v. Jafco, Inc., 375 U.S.301, 306 n.3 (1964).* "Federal courts are without power to decide questions that cannot effect the rights of litigants in the case before them." *North Carolina v. Rice, 404 U.S. 244, 246 (1971) (per curiam).*

In *Lane v. Williams, 455 U.S. 624 (1982),* the court observed: "Collateral review of final judgment... is not warranted absent a showing that the complainant suffers actual harm from the judgment that he seeks to avoid." In this case, Anderson has demonstrated collateral consequences, which are made manifest by the court's Order, and are likely to recur.

It is evident that this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a court's supervisory power: (1) to implement a remedy for violation of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter future illegal conduct. *United States v. Hasting, 461 U.S. 499, 505 (1983); United States v. Simpson, 927 F.2d 1088,1090 (9th Cir. 1991.* All three of these bases apply to Anderson's case.

A court must not allow itself to be made an accomplice[ ] in willful disobedience of law." *McNabb v. U.S., 318 U.S. 332, 345, 63 S. Ct. 608, 615, 87 L Ed. 819, (1943).* "Guided by consideration of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Hastings, 461 U.S. 499, 505, 103 S. Ct. 1974, 1978, 76 L. Ed. 2d 06 (1983).*

Respectfully Submitted,

s/ Don Benny Anderson
Don Benny Anderson"

The merits of this APPELLANT'S MOTION TO RECONSIDER ORDER concern court's disposition of the factual matters underlying the case. Under governing law a court is required to "construe the complaint in the light most favorable to the plaintiff and its allegations must be taken as true," any ambiguities or uncertainties concerning the "sufficiency of the claims must be resolved in favor of the plaintiff."

A "complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Hughes v. Rowe, 449 U.S. 5, 10 (1980); Scheuer v. Rhodes, 416 U.S. 232, 236 (1979)); Conley v. Gibson, 355 U.S. 41, 45 (1957).* In judgment, the court must consider the pleadings, related documents, and evidence in a light most favorable to the non-moving party. *Adickes v. Kress Co., 398 U.S. 144 (1970).*

"Moreover, in analyzing a motion for [reconsideration], the court is obligated to view the record and the inferences to be drawn therefrom, in the light most favorable to the non-movant." *Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987). Id. at 298. See Walker v. Washington, 627 F. 2nd 541, 545 (D.C. Cir. 1980) (per curiam).* Thus, this court's Order of the factual matters in this case is not "so clear as to make [dismissal] proper." *Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987).*

All of the government's orders, trials, judgments, convictions, sentences, actions, allegations, and statement in its pleadings rest on *fraudulent* assumptions –by law – therefore the government's entire case must be dismissed for fraud because: "Fraud destroys the validity of everything into which it enters," *Nudd v Burrows, 91 U.S. 426;* "Fraud vitiates everything," *Boyce v. Grundy, 3 Pet. 210;* "Fraud vitiates the most solemn contracts, documents and even judgments," *U.S. v. Throckmorton, 98 U.S. 61.*

If the court and government cannot now produce records requested, then the Order issued by judges should have legal authority. Judges know that their Order was arbitrary and capricious, and issued with criminal intent - to create irreparable harm to Appellant, knowing the government failed to meet the criteria for dismissal. On appeal, this appellate court should review issues raised by *de novo* review.

The Supreme Court has instructed and reviewing court is required to undertake a "searching and careful" review of the facts. *Citizens to Preserve Overton Park v. Volpe, 401 U.S. 402, 415, 416 (1971); see also Wawszkiewicz v. Department of Treasury, 670 F. 2d 296,* *301 & n. 42 (D.C. Cir. 1981); Ethyl Corp. v. EPA, 541 F.2d 1, 34-37 (D.C.Cir.) (en banc), cert. denied, 426 U.S. 941 (1976).* Appellant respectfully submit that the "searching and careful" review that Supreme Court requires has never been performed in this case. The Court is urged to examine the facts of the case with a careful and critical eye, including the statements and affidavits of Anderson. Such a review will show that government's position is completely unsupported by the evidence presented. Therefore the court, in its ORDER for dismissal, steered away from a *de novo* review. Dismissal of this appeal is particularly inappropriate in this case given the need for judicial consideration of the substantial record submitted during the proceedings. Appellant should be granted a fair determination of all facts presented.

FULL CONSIDERATION OF ALL FACTORS – CANBY, THOMAS, and IKUTA, Circuit Judges, must show proper consideration of all factors, both favorable and unfavorable, but they failed to do so. See *Bhasis v. Gonzales, 423 F. 3d 977, 986-87 (9th Cir. 2005)* (holding that the BIA abused its discretion by improperly discrediting petitioner's affidavit as "self-serving" and failing to properly consider the factors relevant to eligibility for relief). Court abused its discretion, did not engage in substantive analysis and articulate reasons for its decision. Judges erred by denying motions while failing to articulate their reasons for denying motions individually and in a complete and proper order, and by failing to consider all attached evidence properly in an impartial manner. Because court entertained motions in the first instance, and then failed to provide specific and cogent reasons for its decision, petitioner is left without a reasoned decision to review and challenge in this APPELLANT'S MOTION TO RECONSIDER ORDER. Court must issue an Order that fully explains the denying of all motions included in attached exhibits individually as a result of this Motion to Reconsider Order, and must address and rule upon each motion, giving specific, cogent reasons for the grant or denial. Streamlining procedures without court weighing the favorable and unfavorable factors and indicating with specificity that court had heard and entertained each specific fact and weighed the favorable and unfavorable is nothing but "procedural kidnapping", in violation of Title 18 Section 1201 and the First Amendment.

The Court of Appeals has not presented a "point by point comparison" of all relevant affidavit/declarations, claims, issues and questions. The court and government do not dispute Appellant's legal points with evidence showing he is wrong. Court and Government do not dispute the likelihood that Appellant will prevail on the merits. Nor does the court or government present new case authority in support of any claim that Appellant is unlikely to prevail on the merits.

Appellant satisfies the Standard for Irreparable harm. Appellant has demonstrated injury that is "certain and great;...not theoretical.". D.C. Circuit's long-standing recognition that availability (or unavailability) of possible compensatory remedy plays a crucial role in the irreparable harm analysis: The possibility that adequate compensation or other corrective relief will be available at a later date, in the ordinary course of litigation, weights heavily against a claim of irreparable harm. *Wisconsin Gas, supra, 758 F2d at 674 (quoting Virginia Petroleum Jobbers Ass'n v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958)).* The essence of "irreparable" harm is that such harm is not susceptible of repair through later judicial relief in an action for monetary damages. Appellant argues that he has shown irreparable injury because he will not be able to recover money damages from the government.

Demonstrated irreparable harm identified by Anderson includes his inability to move to Nevada and to open a gun business there. Anderson's travel is restricted and he was forced to return to Illinois after a week. He is unable to travel outside his immediate District for any reason without written permission from his supervisor. Anderson is required to report to Parole Officer monthly, when changing employment or residence, and when contacted by any law enforcement. He cannot possess firearms, and cannot have any contact with other convicted felons and must report same, should it occur. His right to hold office will not be restored until his period of supervision is concluded. Anderson is entitled to compensation for the premeditated kidnapping and destruction of his good name, family and loss of business opportunities. He would like to travel abroad and throughout the United States, to run for public office, to vote in state and federal elections, to sit on a jury, and to go into business immediately. He may suffer future false arrest, conviction and sentence on fictional charges such as this case at bar, and have previous convictions used against him as long as false arrest records, conviction records and sentencing records remain on his record.

What is paramount to this APPELLANT'S MOTION TO RECONSIDER ORDER is the fact that the Record of this case contains not one affidavit by government or a piece of paper from appellees that would qualify as evidence under the Rules of Civil Procedure. Although the Record includes numerous fraudulent government statements, there is nothing to support appellees' transfer of this case to Tennessee or the Order to dismiss.

Varsic v. U.S. District Court, 607 F. 2d 245, 251 (9th Cir. 1979)(transfer orders under 28 U.S.C. Section 1406 are not directly appealable). In this case at bar, district court had personal jurisdiction over Anderson and issues raised. Nor was district court transfer order issued under 28 U.S.C. Section 1406 which is not directly appealable.

Under 28 U.S.C. section 1406(a), a district court may "transfer a case brought in the wrong division or district" to a district where it might have been originally brought if it is "in the interest of justice". In deciding whether transfer is appropriate under section 1406(a), courts are to look at whether the transfer is in the interest of justice; that is, whether the transferee forum is convenient to the parties and witnesses as well as what impact transfer has on the efficient administration of the court system. *Wild v. Subscription Plus, Inc., 292 F. 3d 526, 530 (7th Cir. 2002).* When evaluating the convenience of the parties and witnesses, a court can consider: 1) the plaintiff's choice of forum; 2) the situs of material events; 3) the relative ease of access to sources of proof; 4) the convenience of the witnesses; and 5) the convenience to the parties. *Coleman v. Bucheit, Inc., No. 03 C 7495, 2004 WL 609369, at *2 (N.D. Ill. Nov. 3, 2004).* The balancing of these factors is committed to the sound discretion of the trial judge *Cont'l Ins. Co. v. M/V Orsula, 354 F. 3rd 603, 608 (7th Cir. 2003)* and the decision whether to transfer a case on venue grounds is "largely a discretionary determination," to be decided on a case by case basis. *Von Holdt v. Husky Injecting Molding Sys. Ltd., 887 F.Supp. 185, 188 (N.D. Ill. 1995).* Evidence presented show that Tennessee was the wrong venue for this case. Since the United States District Court of Nevada had proper venue and jurisdiction, this Court of Appeals now has complete lawful jurisdiction.

Anderson declares the source of information relied on is unaltered court tape recordings and perfect transcripts made from them, without omissions or inaudible portions from the following court cases to reveal that he is a victim of political kidnapping and was kidnapped in violation of Title 18 Section 1201; a victim of domestic terrorism in violation of Title 18 Section 2331; in forced labor in violation of Title 18 Section 1589, in involuntary servitude in violation of Title 18 Section 1584; and victim in respect of peonage, slavery involuntary servitude, or forced labor in violation of Title 18 Section 1590; victim of a conspiracy against rights in violation of Title 18 Section 241; and a victim of deprivation of rights under color of law in violation of Title 18 Section 242.

CONCLUSION

District Courts and Court of Appeals orders in the case at bar breed contempt, destroy justice and domestic tranquility, overthrow the United States Constitution by blocking the Right to Petition for Redress of Grievances by preventing meaningful access to the court, or covering up violation of law by the Government to justify and/or cease its unlawful behavior.

TAKE JUDICIAL NOTICE: Any judge who does not comply with his/her oath to the Constitution wars against our Constitution for the United States of America and engages in acts in violation of the supreme law of the land. The judge is engaged in acts of treason. The United States Supreme Court has stated that "no state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it". See also *In Re Sawyer, 124 U.S. 200 (188); U.S. v. Will, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406 (1980); Cohen v. Virginia, 19 U.S. (6 Wheat) 264, 404. 5 L. Ed. 257 (1821); Cooper v. O'Conner, 99 F2d 433.*

For the reasons set forth above, the ORDER to dismiss for lack of jurisdiction should be vacated and this court must use its supervisory powers. The Supreme Court has recognized three bases for the exercise of a court's supervisory power: (1) to implement a remedy for violation of recognized rights, (2) to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and (3) to deter future illegal conduct. *United States v. Hasting, 461*

U.S. 499, 505 (1983); United States v. Simpson, 927 F.2d 1088,1090 (9th Cir. 1991. All three of these bases apply to Anderson's case.

"A court must not allow itself to be made an accomplice [ ] in willful disobedience of law" *McNabb v. U.S., 318 U.S. 332, 345, 63 S. Ct. 608, 615, 87 L.Ed. 819 (1943).* "Guided by considerations of justice, a court may exercise its supervisory powers as necessary to preserve judicial integrity and deter illegal conduct." *United States v. Hastings, 461 U.S. 499, 505, 103 S. Ct., 1974, 1978, 76 L. Ed. 2d 96 (1983).*

REQUIREMENT FOR DUE PROCESS

Constitutional Basis – Petitioner is entitled to Fifth Amendment due process right to a fair hearing or decision in an Order. Court's Order is a denial of due process under the Fifth Amendment because the proceeding or decision-making process was fundamentally unfair and Petitioner was prevented from reasonably having his case heard by impartial judges. Judges have denied Petitioner due process by covering up that the United States Parole Commission unconstitutionally sentenced Anderson, and he was tried in absentia in federal courts without notice of trials or being present. Federal Bureau of Investigation manufactured fictional convictions which came to light when Anderson was required to register with the local police in Las Vegas. All federal and state courts acted in the complete absence of jurisdiction. This court knows it is a violation of Anderson's rights under the Fifth Amendment of the Constitution to try him in absentia and for all federal and states courts to kidnap Anderson in violation of our Constitution for the United States of America. Court must consider the evidence, each Declaration in affidavits submitted by petitioner in each individual motion presented, and meet due process requirements. Due process, under the Fifth Amendment requires that violation of the United States Constitution, First Amendment, "Congress shall make no law…right of the people…to petition the government for Redress of Grievances" must be addressed and grievances adjudicated.

The attached Certificate of Service lists all Exhibits, including motions which were dismissed by Courts without due process, violating Anderson's Fifth Amendment rights.

Respectfully Submitted,

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938-1156
217 249-4999

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 79th day of August, 2009, I have served this APPELLANT'S MOTION TO RECONSIDER ORDER, along with the following exhibits:

Exhibit A - Order, filed July 29, 2009

Exhibit B - ORDER DENYING AND DISMISSING HABEAS PETITION, ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH, AND ORDER RESTRICTING FILING PRIVILEGES IN T HIS DISTRICT- U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DIVISION

Exhibit C - DON BENNY ANDERSON'S "REPLY TO RESPONSE" TO RESPONDENT – Filed June 9, 2009

Exhibit D - APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION includes EXHIBIT 1 – ORIGINAL MOTION FOR SUMMARY JUDGMENT AND MOTION TO DISMISS (Note: Respondent is correctly identified as United States Parole Commission)

Exhibit E - APPELLANT'S INFORMAL BRIEF

on the following parties to proceeding, by depositing it is an parcel containing the above document properly addressed and with first class postage prepaid.

The name and address of parties served is as follows:

Clerk, U.S. Court of Appeals For The Ninth Circuit
P.O. Box 193939
San Francisco, California 94119-3939

United States Attorney
333 Las Vegas Blvd. S. #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
P. O. Box 1156
Mattoon, Illinois 61938-1156
217-246-4999

FILED
July 2 9 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON BENNY ANDERSON, Petitioner-Appellant, v. FEDERAL BUREAU OF INVESTIGATION, Respondent-Appellee	No. 09-1631 D.C. No. 2:08-cv-01256-JCM District of Nevada, Las Vegas

Before CANBY, THOMAS and IKUTA, Circuit Judges.

A review of the record demonstrates that the court lacks jurisdiction over this appeal because the order challenged in the appeal is not final or appealable. *See Nascimento v. Dummer, 508 F.3d 905, 908 (9th Cir. 2007)* (transfer orders are not directly appealable). Consequently, this appeal is dismissed for lack of jurisdiction.

MF/ProSe

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE WESTERN DISTRICT

DON BENNY ANDERSON	]	
	]	
Petitioner,	]	
	]	
vs.	]	No. 08-2821-STA/dkv
	]	
FEDERAL BUREAU OF INVESTIGATION,	]	
	]	
Respondent,	]	
	]	

ORDER DENYING AND DISMISSING HABEAS PETITION, ORDER CERTIFYING APPEAL NOT TAKEN IN GOOD FAITH AND ORDER RESTRICTING FILING PRIVILEGES IN THIS DISTRICT

Petitioner Don Benny Anderson filed this federal habeas petition under 28 U.S.C. § 2241 in the United States District Court for the District of Nevada and paid the filing fee. After requiring that Anderson amend his petition, United States District Judge James Mahan, determined that Anderson challenged a conviction from Memphis, Tennessee and transferred the petition to this district.

Petitioner Anderson alleges that he discovered in 2008 that he was convicted in absentia of "explosives property destruction" in 1987 in Memphis and received a sentence of forty-two years imprisonment.[1] He alleges that he discovered this conviction when

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[1] It is unclear from the petition whether Anderson challenges a federal or state conviction. Because Anderson invokes 28 U.S.C. § 2241, the Court will proceed under the assumption that Anderson challenges a federal conviction.

FILED
Jun 9 2009
MOLLY C. DWYER, CLERK
U.S. Court of Appeals

No. 08-17603

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON BENNY ANDERSON,	)	
Petitioner-Appellant,	)	
v.	)	DC No. 2:08-cv-01239-RCJ-LRL DISTRICT OF NEVADA, LAS VEGAS
UNITED STATES OF AMERICA,	)	
Respondent-Appellee,	)	

DON BENNY ANDERSON'S "REPLY TO RESPONSE" TO RESPONDENT- APPELLEE'S RESPONSE TO APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION

Appellant Don Benny Anderson files his Reply to Response, pursuant to Federal Rule of Appellate Procedure 27, for consolidation and judgment/order and to stay briefing schedule during pendency of motion.

The Government deliberately sent their APPELLEE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE AND TO STAY BRIEFING SCHEDULE OF MOTION to an old address in Springfield, IL, instead of the new address in Mattoon, IL, delaying its delivery to Appellee. **Timely Certification:** This reply to response is timely filed.

Now comes Don Benny Anderson, pro se, in response to government reply fraudulently titled APPELLEE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE AND TO STAY BRIEFING SECHEDULE OF MOTION which presents matters that do not relate to the response.

Fed. R. App. P. 27: "(4) Reply to Response. Any reply to a response must be filed within 5 days after service of the response. A reply must not present matters that do not relate to the response."

Appellee claims "On May 22, 2009, Anderson filed an 87-page document that contains a partial response to Government's motion for summary affirmance. That follows the 10-page "response" he filed on April 2l, 2009."

Appellee also claims that "Anderson's latest response should be stricken. Under the Federal Rules of Appellate Procedure, motions and responses 'must not exceed 20 pages.'" "Anderson tries to skirt this restriction by splitting his enormous submission into two parts. To his 20-page "Motion for Consolidation and Judgment/Order, etc., 'Anderson attaches (as "Exhibit 1") a 67-page "Motion for Summary Judgment and Motion to Dismiss Government's Motions". That 67-page submission (and not the "consolidation motion") contains Anderson's responses to the jurisdictional issue raised in the Government's motion for summary affirmance, and greatly exceeds the permissible page limit."

Appellant responds that his document followed the guidelines for motion as stated in Fed. R. App. P. 27 and did not violate the rules for motions and responses which state:

> Fed. R. App. P. 27: "(d)(2) Page Limits. A motion or a response to a motion must not exceed 20 pages exclusive of the corporate disclosure statement and accompanying document."

APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER, AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION followed the Federal Rules which limit the document size to 20 pages. Appellant's Exhibit 1 was intended only to support points raised in the Motion. Appellee/Respondent instead attempted to respond to the document shown as Exhibit 1, completely failing to address the issues addressed in the APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION.

Respondent-Appellee on May 29, 2009, almost a month late, decides to file a response to *DON BENNY ANDERSON'S RESPONSE TO APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION.* The Government never asked for an extension of time for filing their response nor did this court grant the Government an extension of time. Therefore, Governments motion APPELLEE'S REPLY IN SUPPORT OF MOTION FOR SUMMARY AFFIRMANCE AND TO STAY BRIEFING SCHEDULE OF MOTION should be stricken because it was not timely filed and presented matters that were not related to that Response.

The sole issue addressed by **APPELLEE'S RESPONSE TO APPELLANT"S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION** is a request that these cases:

(1) DC No. 2:08-cv-01239-RCJ-LRL, IN THE FURTHERANCE OF JUSTICE ORDER WRIT OF HABEAS CORPUS BE GRANTED NOW, DISTRICT OF NEVADA, LAS VEGAS, and

(2) DC ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL, DON BENNY ANDERSON, Petitioner - Plaintiff, vs UNITED STATES PAROL COMMISSION, Respondent, PETITIONER-PLANTIFF'S REBUTTAL TO GOVERNMENT'S DELIBERATELY COMBINED MOTION TO DISMISS NOS. 2:08-cv-01256-JCM-LRL, 2:08-cv-01486-RCJ-PAL, 2:08-cv-01501-KJD-GWF 2:08-cv-01514-JCM-

GWF, PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA AND PLAINTIFF'S MOTION FOR SUMMARY JUDGEMNT AND MOTION TO DISMISS WAS TIMELY SENT-CLERK RETURNED IT STATING "YOU MUST HAVE AN ORIGINAL MOTION FOR EACH CASE YOU HAVE."

ORIGINAL MOTION FOR SUMMARY JUDGEMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL

PLAINTIFF'S MOTION FOR SUMMARY JUDGEMENT AND MOTION TO DISMISS GOVERNMENT'S MOTION. DC NO: 2:08-cv-01256-JCM-LRL, DISTRICT OF NEVADA, LAS VEGAS

be combined since both cases are inter-related in that the Courts failed to act on Affiant's petition even though no evidence/contrary affidavits rebutting Affiant Anderson were ever presented. In the interest of justice, judicial economy and finality Anderson moves this Court to exercise supervisory power and rule on both motions. Anderson has shown uncontrovertible evidence that this Court has jurisdiction in his Affidavit in pages 7 - 17 of APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION.

The Appellee mentions that Anderson's response "rails against conspiracies and cover ups", but the Government has never denied involvement in a cover up and participation in violation of Title 18 Section 1201, Title 18 Section 2331, Title 18 Section 1589, Title 18 Section 1584, Title 18 Section 1590, Title 18 Section 141, and Title 18 Section 242. Anderson declares the source of information relied on is unaltered court tape recordings and perfect transcripts made from them, without omissions or inaudible portions for court cases which reveal that he is a victim of crimes in violation of these laws.

United States v. Simpson; Anderson; Free, March 6, 1991, 927 F.2d 1088:

"Under their supervisory power, courts have substantial authority to oversee their own affairs to ensure that justice is done.

"The Supreme Court has recognized only three legitimate bases for exercise of the supervisory power: to implement a remedy for the violation of a recognized statutory or constitutional right; to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury; and to deter future illegal conduct" *Hasting, 461 U.S. at 505, 103 S.Ct. at 1978; United States v. Gonsalves, , 1320 (9th Cir.1986); Gatto, 763 F.2d at 1044.*

Respectfully Submitted,

s/ Don Benny Anderson
Don Benny Anderson
2500 Moultrie Avenue
Mattoon, Illinois 61938
217 246-4999

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 6th day of June 2009, I have served this DON BENNY ANDERSON'S "REPLY TO RESPONSE" TO RESPONDENT – APPELLEES'S RESPONSE TO APPPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ORDER AND TO STAY BRIEFING SCHEDUL DURING PENDENCY OF MOTION on the following parties to proceeding, by depositing it in an envelope containing the above document in the United States mail properly addressed with first-class postage prepaid.

The name and address of parties served is as follows:

Clerk, U.S. Court of Appeals For The Ninth Circuit
P. O. Box 193939
San Francisco, California 94119-3939

United States Attorney
333 Las Vegas Blvd. S. #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Avenue
Mattoon, IL 61938-2528
217 246-4999

FILED
May 22 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

No. 08-17603

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DON BENNY ANDERSON,)
)
Petitioner – Appellant,)
) DC No. 2:08-cv-
) 01239-RCJ-LRL
v.) DISTRICT OF
) NEVADA,
) LAS VEGAS
UNITED STATES OF AMERICA,)
)
Respondent-Appellee,)
)

APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT /ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION

DON BENNY ANDERSON,
Petitioner – Appellant,

Don Benny Anderson
2500 Moultrie Ave
Mattoon, IL 61938-2528
217-246-4999
Pro se Appellant

Appellant, Don Benny Anderson, hereby moves this Honorable Court, pursuant to Federal Rule of Appellate Procedure 27, consolidating the following commingled cases, for judgment/order and for relief sought in cases mentioned within them and attached exhibits:

(1) DC No. 2:08-cv-01239-RCJ-LRL, IN THE FURTHERANCE OF JUSTICE ORDER WRIT OF HABEAS CORPUS BE GRANTED NOW, DISTRICT OF NEVADA, LAS VEGAS,

(2) DC ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL, DON BENNY ANDERSON, Petitioner - Plaintiff, vs UNITED STATES PAROL COMMISSION, Respondent, PETITIONER- PLANTIFF'S REBUTTAL TO GOVERNMENT'S DELIBERATELY COMBINED MOTION TO DISMISS NOS. 2:08-cv-01256-JCM-LRL, 2:08-cv-01486-RCJ-PAL, 2:08-cv-01501-KJD-GWF 2:08-cv-01514-JCM-GWF, PETITIONS FOR WRIT OF HABEAS CORPUS, AND TO PROHIBIT PETITIONER FROM FILING ANY FURTHER PETITIONS FOR HABEAS CORPUS IN THE DISTRICT OF NEVADA AND PLAINTIFF'S MOTION FOR SUMMARY JUDGEMNT AND MOTION TO DISMISS WAS TIMELY SENT-CLERK RETURNED IT STATING "YOU MUST HAVE AN ORIGINAL MOTION FOR EACH CASE YOU HAVE."

ORIGINAL MOTION FOR SUMMARY JUDGEMENT AND TO DISMISS NO: 2:08-cv-01256-JCM-LRL PLAINTIFF'S MOTION FOR SUMMARY JUDGEMNT AND MOTION TO DISMISS GOVERNMENT'S MOTION. DC NO: 2:08-cv-01256-JCM-LRL, DISTRICT OF NEVADA, LAS VEGAS.

GROUNDS FOR THE MOTION AND LEGAL ARGUMENTS

This Court cannot simply ignore Anderson's alleged facts and find that it lacks jurisdiction without counter-affidavits in response to these troubling facts in above cases. The District Court has refused to rule on the merits of the appellant's ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS No. 2:08-cv-01256-JCM-LRL. The Government provided no affidavits and no authorities in its so-called Government's Response In Opposition to Motion For Summary Judgment, sent to the Affiant on December 23, 2008. Rule 56 of the Federal Rules of Civil Procedure states that summary judgment must be granted when there is no genuine issue of material fact that would affect the outcome of your case. Since Government never properly opposed Affiant's motions by filing opposing points and authorities or admissible evidence, the court should have found in Affiant's favor and granted summary judgment. No action has been taken by the Court on this matter.

(See EXHIBIT 1, page 43- of ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS, No.2:08-cv-01256-JCM-LRL.): "Case 8) 2:08-cv-1239-RCJ-(LRL), U.S. District Court of Nevada, Las Vegas, NV – a) Petitioner filed Petition for Writ of Habeas Corpus and subsequent Motion to Expedite, which named United States Parole Commission as Respondent; b) on October 24, 2009, court ordered that the Petition for Habeas Corpus be DISMISSED, Motion to Expedite be DENIED as moot and judgment entered for Respondent; c) no record of any response by Respondent was presented; d) Judge and clerk acted together to deny Anderson the 10-day period to appeal as allowed under Rule 59 [(e)], "A motion to alter or amend a judgment must be filed no later than 10 days after the entry of the judgment."; e) Anderson was prevented by said judgment to respond to the order, demonstrating the obvious bias of Judge Robert C. Jones; f) THE SOLE ISSUE RAISED IN THE

ORIGINAL WRIT OF HABEAS CORPUS IS WHETHER THE UNITED STATES PAROLE COMMISSION HAD ARTICLE III JUDICIAL AUTHORITY TO ISSUE SENTENCE."`
Also in Exhibit 1, ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS, No.2:08-cv-01256-JCM-LRL.), page 4- Affiant presented evidence that U.S. Parole Commission conceded that they knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence, in that they did not challenge any issues raised point by point. U.S. Code Title 28, Section 2248 states that the allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true, except to the extent that the judge finds otherwise. In this case court has failed to show any evidence in favor of the government and should have ruled in Affiant's favor. No action has been taken by the Court on this matter.

Both cases are inter-related in that the Courts failed to act on Affiant's petition even though no evidence/counter affidavits rebutting Affiant Anderson were ever presented. In the interest of judicial economy and finality Anderson moves this Court to exercise supervisory power and rule on both motions.

Respectfully Submitted,

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Ave
Mattoon, IL 61938-2528
217-246-4999

TITLE 18 SECTION 1621 UNSWORN DECLARATION OF EVIDENCE UNSWORN AFFIDAVIT/ DECLARATIONS OF DON BENNY ANDERSON UNDER THE PENALTY OF PERJURY PURSUANT TO TITLE 28 U.S.C. SECTION 1746 PRESENTS THE FOLLOWING CONCISE STATEMENT SETTING FORTH EACH FACT MATERIAL TO THE DISPOSITION OF THIS MOTION

1. My name is DON BENNY ANDERSON. I am sixty-eight (68) years of age, having been born on December 19, 1940, in Springfield Illinois;
2. I am of sound mind and fully competent to make this Affidavit/ Declarations under the penalty of perjury;
3. This Affidavit/Declarations and Affidavits/Declarations in EXHIBIT 1 must stand for Truth and Fact, unless challenged point-for-point by an opposing Affidavit/Declarations drawn under the same terms and conditions as this instrument;
4. This Affidavit/Declarations and Affidavits/Declarations in EXHIBIT 1 will stand for Truth and Fact before United States Court of Appeals for the Ninth Circuit, in this APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT /ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION;
5. This Affidavit/Declarations and Affidavits/Declarations in EXHIBIT 1 are made on personal knowledge and sets forth facts that are admissible evidence;
6. Above case issues and grounds are commingled in: DC No. 2:08-cv-01239-RCJ-LRL and DC No. 2:08-cv-01256-JCM-LRL, and this court has jurisdiction;
7. In IN THE FURTHERANCE OF JUSTICE ORDER WRIT OF HABEAS CORPUS BE GRANTED NOW, DC No. 2:08-cv-01239-RCJ-LRL, Anderson stated that "This court has jurisdiction. Petitioner is staying with

Kay Dahlgren, in this court's jurisdiction, until required by Exhibit E to return to the Central District of Illinois. Petitioner wants to stay here in Nevada and open a business immediately and not to be forced to return to Illinois on Sunday."

8. In this case "The sole issue is whether United States Parole Commission had Article III judicial authority to issue sentence found in Exhibit A."
9. In DC No. 2:08-cv-01256-JCM-LRL, (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008;
10. (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
11. (3) petitioner is unable to establish a residence and gun sales business in Nevada;
12. (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;
13. (5) petitioner cannot possess firearms;
14. (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.
15. Combining of these cases is appropriate since collateral consequences are the same, as explained in Nos. 7 through 27 and the District Court, having jurisdiction, has failed to acknowledge and rule on the merits of the cases.
16. Prosecution's own Exhibit 3, last page called Exhibit C, in Government's APPELLEE'S MOTION FOR SUMMARY AFFIRMANCE AND TO STATE BRIEFING SCHEDULE DURING PENDENCY OF MOTION, supports Anderson's claim of collateral consequences. It states that "A person convicted of a felony under federal law may not possess a firearm (including both long guns and handguns) or

ammunition." As a result, Affiant will only be able to open his business if these convictions are overturned.

17. "The right to hold public office is automatically restored upon completion of your sentence including any period of supervision." Unless convictions are overturned, Affiant cannot pursue public office until 2024.
18. Exhibit 3, Exhibit B, of the same document, contains the statement that "petitioner is a victim of a kidnapping conspiracy and respondent(s) cannot provide a transcript proving the charged crime occurred as alleged in the charging instrument.
19. For Don Benny Anderson is entitled to compensation for the pre-meditated kidnapping and destruction of his good name, family and business opportunities;
20. and is planning on traveling abroad and all the states of the union, running for public office, flying planes, voting in state and federal elections, being on a jury, owning a gun, getting a driver's license, going into business immediately;
21. and may suffer another possible false arrest, conviction and sentence in the future on fictional charges as in this case at bar which has been used against him by kidnapping conspirators in United States District Courts, United States Courts of Appeals and United States Parole Commission;
22. and he will suffer future collateral consequences if false arrest records, conviction records and sentencing records remain."
23. As long as these convictions remain on Anderson's record, he will be unable to write his planned book about his experiences, since he cannot gain monetarily from alleged illegal activities;
24. Anderson also wishes to run for Public Office immediately and is unable to do so as long as convictions remain on his record;

25. Affiant has already suffered consequences in that Government has created false convictions in absentia while Anderson was already incarcerated;
26. Affiant is entitled to collateral review of final judgments of federal and state courts because he has made a showing of actual harm from the judgments that he seeks to avoid. *See Lane v. Williams, 455 U.S. 624 (1982).*
27. Affiant is being affected and has a reasonable expectation that he will again be affected by judgments and sentences imposed in the complete absence of all jurisdiction; will have to register in Nevada again and get permission to travel;
28. Counsel failed to prevent continuing collateral consequences and concrete and continuing injury from conviction, with following civil disabilities imposed by operation of law-imposed by federal or state law:
29. Anderson was coerced by Bureau of Prisons and the U.S. Parole Commission to sign parole papers;
30. United States Parole Commission should, as a result, be named as Respondent in this case;
31. Affiant is not legally on federal parole since only a lawful Article III court with judicial authority can issue sentence;
32. Under our constitutional system, the right to impose punishment provided by law is judicial;
33. The limitation is therefore of constitutional dimension, deriving from Article III's grant to the court of power over "cases and controversies".
34. No court ever ordered probation or other conditions nor delegated that authority.
35. Under the United States Constitution, only a sentencing court having lawful Article III's judicial authority; having been invested under the Constitution with power over "cases and controversies" can impose sentence. Bureau of Prisons or United

States Parole Commission agents have no authority to sentence an offender to parole;

36. One, the original Constitution was entirely a statement of government's duties;
37. Two, A "Constitutional Guarantee" implies a governmental duty – even if the duty is otherwise unspecified in the Constitution;
38. Three, Government is mandated to perform its clearly-mandated duties;
39. Four, There is no constitutional power which allows government to waive its duties;
40. Five, Constitutional duties cannot be waived because they are not principally obligations of individual defendants or citizens;
41. Six, Government agents' obligation is to government's true boss: WE THE PEOPLE, ALL THREE HUNDRED MISSION OF US;
42. Seven, The only way government can "waive" a constitutional duty owed to 300 million Americans is by persuading two-thirds of Congress and three-quarters of the fifty States to agree to lawfully amend the Constitution to revoke or modify that duty. See United States Constitution Article V;
43. Eight, As a matter of fact, the waiver of a constitutionally-mandated governmental duty constitutes an amendment to the Constitution and cannot be lawfully implemented by any mere individual defendant, prosecutor or judge or any combination of them according to the Supreme Law: Constitution for the United States of America;
44. The Government provided no affidavits and authorities in its so-called Government's Response in Opposition to Motion For Summary Judgment, sent to the Affiant on December 23, 2008;
45. Writ of habeas corpus may be granted where Affiant is in custody in violation of the Constitution or laws or

treaties of the United States. Title 28 U.S.C. Section 2241(c) (3);

46. Affiant's petition seeking habeas corpus relief is appropriate under 28 U.S.C. Section 2241 because he is challenging the fact or duration of his confinement/custody or restraint;
47. Title 28 U.S.C. Section 2241 is appropriately being used to challenge circumstances of confinement/custody or restriction to Central District of Illinois and restraint of liberty;
48. Respondent has failed to file an appropriate answer or motion together with transcripts of all federal and state court proceedings, including federal and state prosecutors records and prosecutors notes, grand jury transcripts, appeal records and transcripts, and totality of federal and state court records and agents notes and agencies records and investigate reports (See EXHIBIT 1);
49. Respondent has failed to make a return certifying the true cause of detention as mandated by Title 28 Section 2243.
50. Because Affiant, who is currently serving a parole sentence that was enhanced on the basis of a prior conviction, is still in custody, he may challenge the enhancing conviction as constitutionally invalid even though the prior conviction's original custodial term has expired;
51. Affiant can collaterally attack the validity of a previous conviction used to enhance United States Parole Commission sentence obtained in violation of the right to self-representation or right to counsel;
52. Affiant is entitled to collateral review of final judgments of federal and state courts because he has made a showing of actual harm from the judgments that he seeks to avoid. *See Lane v. Williams, 455 U.S. 624 (1982).*

53. Affiant is being affected and has a reasonable expectation that he will again be affected by judgments and sentences imposed in the complete absence of all jurisdiction;
54. All federal and state counsels failed to prevent continuing collateral consequences and concrete and continuing injury from conviction, with following civil disabilities imposed by operation of law-imposed by federal or state law:
55. (1) petitioner required to register with Las Vegas Metropolitan Police because on parole on Sept. 18, 2008
56. at which time he was informed about other trials and convictions;
57. New conviction occurred in Memphis, TN in 1987, carrying a 42-year sentence; trial in absentia, while Anderson was in prison for fictional federal crimes, offense: Explosive Property Destruction, sentence 42 years; [The 42-year sentence in this trial equals the 12-year sentence imposed in Virginia, and the 30-year sentence in Alton, IL, both following Anderson's arrests in 1982 and with no proof of jurisdiction in either... Coincidence or conspiracy? Also the 17-year parole until 2024, following 25 years served equals the same 42 years total.]

    Piper v. Pearson, 2 Gray 120, cited in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed.646 (1872) "Where there is no jurisdiction, there can be no discretion, for discretion is incident to jurisdiction."
58. *Basso v. UPL, 495 F. 2d 906; Brook v. Yawkey, 415 U.S. 528; Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828)* Under federal Law, which is applicable to all states, the U.S. Supreme Court stated that 'if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought,

even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers."

59. (2) petitioner's travel is restricted and he was required to return to Illinois after a week;
60. (3) petitioner is unable to establish a residence and gun sales business in Nevada;
61. (4) requirement to report to Parole Officer when contacted by any law enforcement, when changing employment or other causes as well as reporting monthly;
62. (5) petitioner cannot possess firearms;
63. (6) petitioner cannot have any contact with other convicted felons and must report same, should it occur.
64. Gregory A. Brower, United States Attorney and Robert L. Ellman, Appellate Judge, have failed to address issues raised by Affiant in APPELLANT'S INFORMAL BRIEF, Case No. 08-17603;
65. In ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS No. 2:08-cv-01256-JCM-LRL, Don Benny Anderson shows that he is factually and actually innocent of all Federal and State crimes;
66. The U.S. Parole Commission acted in complete absence of all jurisdiction in sentencing Anderson;
67. District Court abused power by not ruling on issues and not granting relief;
68. Judicial bias by Court has denied Don Benny Anderson benefits, privileges and rights guaranteed by law;
69. Abuse of Power - U.S. Parole Commission agents and other government agents have illegally and unconstitutionally made petitioner subject to their fictional jurisdiction;

70. In ORIGINAL MOTION FOR SUMMARY JUDGMENT AND TO DISMISS, No. 2:08-cv-01256-JCM-LRL, Parole Commission conceded that they knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence, since they did not challenge any issues raised point by point.
71. Title 28, Sec. 2248 – "The allegations of a return to the writ of habeas corpus or of an answer to an order to show cause in a habeas corpus proceeding, if not traversed, shall be accepted as true except to the extent that the judge finds from the evidence that they are not true."
72. Habeas corpus via 2241 is appropriate where United States Parole Commission knowingly and willingly covered up organized government crime and illegally and unconstitutionally imposed sentence;
73. Affiant had an absolute right to be represented by counsel in all federal and state cases from conviction on appeal;
74. The Sixth Amendment right to the effective assistance of trial counsel has been extended to guarantee the effective assistance of counsel on the appeal by right;
75. Affiant was denied effective assistance of counsel in all federal and state case and including appeal (See EXHIBIT 1);
76. Affiant was IN WANT OF EFFECTIVE ASSISTANCE OF COUNSEL AT ALL TRIALS AND ON APPEAL, in violation of his Sixth Amendment rights;
77. Affiant's judgments, convictions, sentences, custody or restraint are in violation of ARTICLE III, Sec. 2, Cl.3 and Fifth, Sixth, Eighth, Tenth, Thirteenth and Fourteenth Amendments of the United States Constitution;
78. Affiant never knowingly, willingly and intelligently waived his constitutional rights;

79. Affiant/Petitioner/Plaintiff is entitled to summary judgment where the documentary evidence produced by the parties permits only one conclusion. *Anderson v. Liberty Lobby, In., , 251-52 (1986);*

80. Affiant seeking summary judgment bears the initial responsibility of informing the Court of the basis of his motion, and identifying those portions of pleadings on file, together with the affidavits, which Affiant has done herein within Affidavit that he believes demonstrates the "absence of a genuine issue of material fact." Celotex Corp. v. Catrett, 477 U.S. 325 (1986) (quoting Fed. R. Civ. P. 56 (c)) (See EXHIBIT 1);

81. Respondent is being informed again of its right to file counter-affidavits or other responsive evidentiary materials to points raised in this document and in EXHIBIT 1, and failure to do so might result in summary judgment against respondent;

82. A party opposing a motion for summary judgment shall file a concise statement, and the source thereof in the record, of all material facts as to which there is a genuine issue precluding summary judgment;

83. Court cannot grant summary judgment for Government's motions because summary judgment is improper where the slightest doubt remains about the fact. See Rand v Rowland, U.S. Court of Appeals for the 9th Cir. – August 27, 1998 (See EXHIBIT 1);

84. Government never submitted any affidavits with its motions; therefore, never presented any evidence at trial;

85. Pro se litigants have a statutory right to self-representation in civil matters and must be ensured of meaningful access to the courts; consequently, we tolerate informalities from civil pro se litigants. See Haines v. Kerner, ,520-21 (1972) (Pro se pleadings are held to less stringent standards than those prepared

by attorneys.) See Rand v. Rowland, U.S. Court of Appeals for the 9th Circ. – August 27, 1998;

86. Courts have a general duty "to ensure that pro se litigants do not lose their right to a hearing on the merits of their claim due to ignorance of technical procedural requirements" and "develop other procedural protections for pro se litigants". See Rand v. Rowland, U.S. Court of Appeals for the 9th Circ. – August 27, 1998;

87. With criminal intent, Court and United States Attorney conspirators have designed ways for this pro se litigant and others to lose meritorious cases at every stage of Court's proceedings including requiring special paperwork "procedural booby traps".

88. Court judges and Government have demonstrated their contempt for the United States Supreme Court and U.S. Court of Appeals for the 9th Circuit decisions by overriding their decisions in not ruling on meritorious claims. See Haines v. Kerner, ,520-21 (1972) (Pro se pleadings are held to less stringent standards than those prepared by attorneys.) See Rand v. Rowland, U.S. Court of Appeals for the 9th Circ. – August 27, 1998;

89. Court used boilerplated Orders claiming lack of jurisdiction;

90. Due to paperwork that Court required Affiant/Petitioner/ Plaintiff to use, Government was able to issue boilerplated motions with irrelevant misleading claims like the following; **"Respondent cannot make any representations concerning the factual background of Petitioner's case because the Petitioner has not alleged that he has been convicted in a federal crime in the District of Nevada."**, thus allowing Courts to rule that the Court had no jurisdiction.

FURTHER DON BENNY ANDERSON SAYETH NAUGHT.

Signed under Title 28 U.S.C. Section 1746 on this 20th day of May 2009.

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Ave
Mattoon, IL 61938-2528
217-246-4999

RELIEF SOUGHT

Wherefore, Anderson prays this court, based on foregoing and following, to grant relief requested herein and in EXHIBIT 1.

Affiant moves this Honorable Court to notify all federal and state agencies that it is issuing an Order of Notification that Anderson's intentional false arrests and illegal convictions and sentences have been declared null and void and failure to comply with Court's expungment order will make the agency plus individuals liable for a penalty of One Million Dollars Per Day, payable to Anderson, if they do not comply. And that a notation in the record is insufficient. That there is to be no trace of them; that the expungment of Affiant's records are ordered against all person and agencies who maintain custody of such records, whether or not they are named as respondent(s) and the records must be turned over to Affiant intact and unaltered within 30 days and with verification by this Court. A Certification of Compliance must be filed with this Court within 30 days of the receipt of order and said order is not in violation of Federal law. For Affiant is a victim of political kidnapping conspiracies and respondent(s) cannot provide a transcript proving the charged crimes occurred as alleged in the charging instruments.

For Don Benny Anderson is entitled to compensation for the premeditated political kidnappings and destruction of his good name, family and business opportunities and is planning to travel abroad and to all the states of the union, to run for public office if relief is not granted, fly planes, vote in state and federal elections, be eligible for jury duty, own a gun, go into business immediately, and publish a book based on his experiences.

Affiant may suffer another possible false arrest, conviction and sentence in the future on fictional charges as, in this case at bar, have been used against him by kidnapping conspirators in United States District Courts and the United States Parole Commission. He will suffer future collateral consequences if false arrest records, conviction records and sentencing records remain.

Since all Courts have acted in complete absence of jurisdiction to create fictional judgments, convictions and sentences, Anderson requests that this court, sua sponte, on its own motion and pursuant 2243 which confers on federal courts the discretion to dispose of habeas corpus matters and to tailor remedies "as law and justice require", order compensation or relief as this court would deem just and proper. See case of Ervin McGee, Jr. v. City of Tulsa (2007) where $14.5 million was awarded for wrongful conviction and imprisonment. Based on this, Anderson believes that he is entitled, as a minimum, to receive one million dollars for each year of sentences with fictional judgments imposed by courts which acted in complete absence of jurisdiction and $500,000 for each fictional conviction. As mentioned in EXHIBIT D of APPELLANT'S INFORMAL BRIEF, Affiant asked that the United States Parole Commission be fined One Billion Dollars for Anderson's false imprisonment. Prosecutor has not challenged Anderson's claims nor stated what compensation he would expect were the situations reversed and he had suffered these injuries.

Roadway Express v. Pipe, 447 U.S. 752 at 757 (1982) "Due to sloth, inattention or desire to seize tactical advantage, lawyers have long engaged in dilatory practices ... the glacial pace of much litigation breeds frustration with the Federal Courts and ultimately, disrespect for the law."

Sherar v. Cullen, 481 F. 2d 946 (1973) "There can be no sanction or penalty imposed upon one because of his exercise of Constitutional Rights."

Affiant is also requesting an Order stating that, if asked if he has been arrested, convicted or sentenced in the past, he can legally state "No". Because, in reality, Anderson was intentionally, illegally and unconstitutionally arrested, convicted and sentenced, and this Honorable Court decreed them Null and Void.

Basso v. UPL, 495 F. 2d 906; Brook v. Yawkey, 415 U.S. 528; Elliot v. Piersol, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) Under federal Law, which is applicable to all states, the U.S. Supreme Court stated that 'if a court is without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification and all persons concerned in executing such judgments or sentences are considered, in law, as trespassers."

Submitted this 20th day of May, 2009

Respectfully Submitted,

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Ave
Mattoon, IL 61938-2528
217-246-4999

CERTIFICATE OF SERVICE

I, Don Benny Anderson, do swear or declare that on this 20th day of May 2009, I have served this **APPELLANT'S MOTION FOR CONSOLIDATION AND JUDGMENT/ ORDER AND TO STAY BRIEFING SCHEDULE DURING PENDENCY OF MOTION** and EXHIBIT 1 on the following parties to proceeding, by depositing it in an envelope containing the above document in the United States mail properly addressed with first-class postage prepaid.

The name and address of parties served is as follows:

Clerk, U.S. Court of Appeals For The Ninth Circuit
P. O. Box 193939
San Francisco, California 94119-3939

United States Attorney
333 Las Vegas Blvd. S. #5000
Las Vegas, NV 89101

Signed pursuant to Title 28 U.S.C. Section 1746.

s/ Don B. Anderson
Don Benny Anderson
2500 Moultrie Avenue
Mattoon, IL 61938-2528
217 246-4999